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Presidential Documents

Title 3—

The President

Executive Order 14119 of March 6, 2024

Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* My Administration's Investing in America agenda includes a once-in-a-generation investment in our Nation's infrastructure. This agenda is also driving the creation of well-paying jobs and growing the economy sustainably and equitably, and it will continue to do so for decades to come. To fully realize the benefits of these investments, students and workers at all stages of life need equitable access to education and training for the good jobs in their communities.

Critical to achieving these goals is promoting Registered Apprenticeships, as described in title 29, parts 29 and 30, of the Code of Federal Regulations, which provide substantial benefits to both workers and employers. As the Nation's largest employer and procurer of goods and services, the Federal Government can be a model for the use and promotion of skills-based hiring, such as the use of Registered Apprenticeships, which reduces barriers to employment and attracts a diverse workforce to meet our Nation's critical needs. My Administration has made strengthening and empowering the Federal workforce a management priority. As a part of its overall strategy to hire, retain, and develop the people needed to accomplish executive department and agency (agency) missions and to create equitable, transparent, and transferable career-development pathways, the Federal Government can scale and expand Registered Apprenticeship programs to modernize and broaden avenues to Federal jobs, thereby improving access to opportunities for underserved workers.

Additionally, Labor-Management Forums provide an opportunity for managers, employees, and employees' union representatives to discuss how Federal Government operations can promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government. Labor-Management Forums, as complements to the existing collective bargaining process, allow managers and employees to collaborate in order to continue to deliver the highest quality goods and services to the American people.

It is the policy of my Administration to promote Registered Apprenticeships to meet employer needs while investing in workers' skills; reducing employment barriers; and promoting job quality, equity, inclusion, and accessibility for the benefit of the Federal Government and the Nation. Further, it is the policy of my Administration to establish cooperative and productive labor-management relations throughout the executive branch.

Sec. 2. *Definitions.* For purposes of this order:

(a) The term ''Registered Apprenticeship'' means an industry-driven career pathway through which employers can develop and prepare their future workforces and individuals can obtain paid training, work experience, progressive wage increases, classroom instruction, and a portable, nationally recognized credential. A Registered Apprenticeship must meet the requirements for registration as set forth in 29 CFR parts 29 and 30.

(b) The term ''Pre-Apprenticeship'' has the meaning set forth in 29 CFR 30.2.

(c) The term ''Labor-Management Forum'' means a nonadversarial forum for managers, employees, and employees' union representatives to discuss how Federal Government operations can promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.

(d) The term ''agencies'' means the Department of State, the Department of the Treasury, the Department of Defense, the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Transportation, the Department of Energy, the Department of Education, the Department of Veterans Affairs, the Department of Homeland Security, the Environmental Protection Agency, the Office of Management and Budget, the Office of the United States Trade Representative, the Office of Science and Technology Policy, the Council on Environmental Quality, the Office of National Drug Control Policy, the Office of the National Cyber Director, the National Science Foundation, the National Aeronautics and Space Administration, the Office of Personnel Management (OPM), the General Services Administration, and the Corporation for National and Community Service.

(e) The term ''participating agencies'' means agencies led by the heads of agencies listed in section 3(b) of this order.

(f) The term ''interested agencies'' means agencies as defined in subsection (d) of this section, the heads of which are not listed in section 3(b) of this order but that are interested in expanding the use of Registered Apprenticeships by either adding Registered Apprenticeship criteria to grants or contracts or including Registered Apprenticeship career opportunities within their agency.

(g) The term ''Labor-Management Forum agencies'' means all agencies subject to chapter 71 of title 5, United States Code.

Sec. 3. *Registered Apprenticeship Interagency Working Group.* (a) There is established within the Executive Office of the President the Registered Apprenticeship Interagency Working Group (Working Group). The function of the Working Group is to coordinate policy development with regard to Registered Apprenticeships and the effective implementation of this order. The Director of the Office of Management and Budget, the Assistant to the President for Economic Policy and Director of the National Economic Council, and the Assistant to the President and Director of the Domestic Policy Council shall serve as Co-Chairs of the Working Group. The Secretary of Labor and the Director of OPM shall serve as Vice Chairs of the Working Group.

(b) In addition to the Co-Chairs and Vice Chairs, the Working Group shall consist of the following members:

(i) the Secretary of the Treasury;

(ii) the Secretary of Defense;

(iii) the Secretary of the Interior;

(iv) the Secretary of Agriculture;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Transportation;

(viii) the Secretary of Energy;

(ix) the Secretary of Education;

(x) the Secretary of Veterans Affairs;

(xi) the Secretary of Homeland Security;

(xii) the Administrator of the Environmental Protection Agency;

(xiii) the Director of the Office of Science and Technology Policy;

(xiv) the Assistant to the President and Director of the Gender Policy Council;

(xv) the National Cyber Director;

(xvi) the Director of the National Science Foundation;

(xvii) the Administrator of the National Aeronautics and Space Administration;

(xviii) the Administrator of General Services; and

(xix) the Chief Executive Officer of the Corporation for National and Community Service.

The Co-Chairs may from time to time invite heads of interested agencies to participate in the Working Group.

(c) The Working Group shall support the implementation of this order by providing guidance and technical assistance to agencies.

(d) The Working Group shall submit an initial report to the President within 180 days of the date of this order. This report shall contain:

(i) initial findings and recommendations on potential opportunities for Registered Apprenticeship programs at participating and interested agencies, including an assessment of the need for new hiring and promotion authorities;

(ii) initial findings and recommendations on the promotion of hiring and career advancement in the Federal Government for individuals who have completed a Registered Apprenticeship;

(iii) an assessment of how Registered Apprenticeships may enable agencies to address hiring needs and improve employee retention for roles that are important to the mission of participating agencies and the operations of the Federal Government; and

(iv) an assessment of how Registered Apprenticeships may expand equity and accessibility and provide pathways into and up through Federal employment for individuals in underserved communities.

(e) The Working Group shall assist agencies, consistent with applicable law, in promoting and utilizing Registered Apprenticeships in Federal grant programs and procurement as described in section 4 of this order. To do so, the Working Group:

(i) may consult with stakeholders from industry, education, labor, and other areas of society to assess demand for Registered Apprenticeships in specific occupations and sectors identified by the Working Group;

(ii) shall review available data provided by the Department of Labor and other relevant agencies on a periodic basis to evaluate the prevalence and growth of Registered Apprenticeships in specific occupations and sectors identified by the Working Group;

(iii) shall encourage the use of common reporting criteria to support agency data collection and measurement of the utilization of Registered Apprenticeships in grants and procurement, including, where permissible, data on demographics and occupation;

(iv) shall collect information from participating agencies on best practices for the utilization of Registered Apprenticeships in grants and contracts, including for expanding job quality, equity, and access to employment for all individuals in underserved communities, and, consistent with applicable law, shall report this information publicly to assist agencies in fulfilling their responsibilities under this order;

(v) shall identify agency programs for which workforce development, including use of Registered Apprenticeships, is an allowable use of funds; and

(vi) shall identify agency programs for which grantees and contractors could be provided incentives, consistent with agency authorities, to adopt or expand Registered Apprenticeship programs for their workforces.

Sec. 4. *Procurement and Grants.* (a) Agencies shall review their Federal financial assistance programs and procurement plans and identify where, as appropriate and consistent with applicable law, they could include requirements, application evaluation factors, or incentives in appropriate program documents or solicitations for grantees or contractors to employ workers on projects receiving Federal funding who are participating in, or who have completed, either a Registered Apprenticeship or Pre-Apprenticeship.

(b) Agencies shall, as appropriate and consistent with applicable law, apply the requirements, application evaluation factors, or incentives that they have identified pursuant to the review conducted in subsection (a) of this section in appropriate program documents or solicitations for grantees or contractors. Agencies may consult the Working Group for technical assistance and other appropriate support in these efforts.

(c) Agencies shall annually report to the Working Group on the programs and solicitations that included the terms described in subsection (a) of this section and the awards and contracts that promoted the use of Registered Apprenticeships and Pre-Apprenticeships pursuant to a requirement, application evaluation factor, or incentive.

Sec. 5. *Expanded Use of Registered Apprenticeships at Agencies.* Based on recommendations from the initial report described in section 3(d) of this order and in consultation with the Working Group, agencies, as part of their strategic workforce planning, shall take steps to develop and expand the use of Registered Apprenticeship programs, where practicable, to train and develop incumbent workers and candidates for employment to obtain the skills necessary to meet the current and emerging needs of the agency workforce. With respect to those programs:

(a) Agencies shall identify, in consultation with OPM, existing authorities that can support both the hiring of new employees for Registered Apprenticeships and the training of incumbent workers through Registered Apprenticeship programs.

(b) Based on recommendations from the initial report described in section 3(d) of this order and in consultation with the Working Group, agencies shall identify top occupations, including those occupations for which the agency faces challenges in recruitment and training, for which the agency may benefit from the use of Registered Apprenticeship programs. Any such actions shall be consistent with section 6 of Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).

(c) Agencies shall develop outreach and recruitment strategies to attract individuals who may not otherwise have considered a Registered Apprenticeship program for Federal employment or advancement.

(d) In consultation with Federal unions through Labor-Management Forums, agencies shall identify opportunities for current Federal employees to access and benefit from a Registered Apprenticeship program.

(e) Agencies shall establish training, mentorship, and career-development services within Registered Apprenticeship programs to support employee development and retention.

Sec. 6. *Implementation of Labor-Management Forums Throughout the Executive Branch.* (a) Executive Order 13812 of September 29, 2017 (Revocation of Executive Order Creating Labor-Management Forums), is hereby revoked.

(b) Each Labor-Management Forum agency, consistent with any guidance issued by OPM, shall:

(i) establish Labor-Management Forums by creating joint labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by the employee union and management, or by adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency mission;

(ii) allow employees and their union representatives to have pre-decisional involvement in workplace matters, including consultation on Registered Apprenticeship recommendations and discussions with management for the development of joint solutions to workplace challenges; and

(iii) evaluate and document, in consultation with union representatives and any further guidance provided by OPM, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the Labor-Management Forums.

(c) Each head of a Labor-Management Forum agency for which there exists one or more exclusive representatives, as defined in 5 U.S.C. 7103(a)(16), shall, in consultation with union representatives, prepare and submit to OPM, within 180 days of the date of this order, a written implementation plan that addresses the requirements of subsection (b) of this section. The Office of Personnel Management shall review each plan within 60 days of receipt and shall determine whether to certify that the plan satisfies the requirements of this order and any further guidance issued by OPM. Upon certification, the head of each Labor-Management Forum agency shall ensure that the certified plan is faithfully executed. Any plan that is determined by OPM to be insufficient shall be returned to the Labor-Management Forum agency with guidance for improvement, and the agency shall resubmit its revised plan to OPM within 30 days of receipt of the original plan from OPM.

Sec. 7. *General Provisions.* (a) This order supersedes Executive Order 13522 of December 9, 2009 (Creating Labor-Management Forums to Improve Delivery of Government Services).

(b) Nothing in this order shall abrogate any collective bargaining agreements in effect as of the date of this order.

(c) Nothing in this order shall be construed to limit, preclude, or prohibit the head of any executive department or agency from electing to negotiate over any or all of the subjects set forth in 5 U.S.C. 7106(b)(1) in any negotiation.

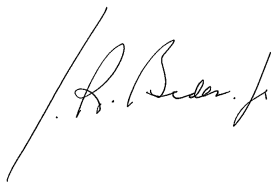
(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 6, 2024.

[FR Doc. 2024–05220
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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, 1726, and 1730

[Docket No. RUS–23–ELECTRIC–0024]

RIN 0572–AC64

Revision to Electric Program Operating Policies and Procedures

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

ACTION: Final rule; request for comment.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing a final rule with request for comments. The intent of this rulemaking is to provide more flexibility for the RUS Electric Program borrowers to complete emergency repairs while maintaining the ability to receive RUS financing, to delete unnecessary and outdated requirements imposed on electric borrowers and applicants and provide flexibility in selecting construction procurement methods that better support applicant needs in awarding construction contracts. These changes will reduce agency travel costs by extending the time between the required review period for operations and maintenance reviews, reduce the number of reviews for RUS Electric Program staff, and increase customer satisfaction and service.

DATES: This final rule is effective June 10, 2024.

Comments must be submitted on or before May 10, 2024.

ADDRESSES: You may submit comments, identified by Docket Number (RUS–23–ELECTRIC–0024) or the RIN # (0572–AC64).

- *Federal eRulemaking Portal:* Follow instructions for sending comments. In the ''Search Documents'' box, enter the Docket Number (RUS–23–ELECTRIC–0024) or the RIN # (0572–AC64) provided in this rule, and click the ''Search'' button. To submit a comment, choose the ''Comment'' button associated with the rule. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the ''FAQ'' link at the bottom of the home page.

Other Information: Additional information about RD and its programs is available on the internet at *www.rd.usda.gov/programs-services.*

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 *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mark Bartholomew, Rural Utilities Service Electric Program, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, STOP 1560, Washington, DC 20250; 704–544–4612 *mark.bartholomew@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development (RD) is a mission area within the U.S. Department of Agriculture (USDA) comprising the Rural Utilities Service (RUS), Rural Housing Service, and Rural Business-Cooperative Service. RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. RD meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America. RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, and cultural and historic preservation. The RUS Electric Program provides funding to maintain, expand, upgrade, and modernize America's rural electric infrastructure. The loans and loan guarantees finance the construction or improvement of electric distribution, transmission, and generation facilities in rural areas.

This rulemaking is part of the RUS Electric Program's continuing effort to improve customer service for its borrowers and to create a more efficient work process for its staff. This rulemaking will continue to streamline RUS Electric Program procedures and revise regulations, including removing unnecessary and outdated regulation references, and simplifying policies and procedures to increase flexibilities for borrowers and applicants.

The goal of these proposed changes is to provide more flexibility for RUS Electric Program borrowers in (1) completing emergency repairs while maintaining the ability to receive RUS financing, (2) selecting construction procurement methods that better support their needs in awarding construction contracts, and (3) delete unnecessary and outdated requirements imposed on electric borrowers and applicants. RUS expects that these actions will enhance RUS and customer efficiency, thereby increasing customer satisfaction and service.

The proposed changes will improve customer experience and customer service and allow RUS to better focus on feasibility and security issues while lessening the burdens on the RUS Electric Program borrowers. In addition, the changes will provide flexibility in making business decisions, and reduces the number of reviews for RUS Electric Program staff. These actions should not impose additional costs on applicants or on electric borrowers as the proposed changes increase flexibility for the Borrowers under existing requirements. These changes will positively affect the RUS Electric borrower experience and enhance RUS customer service by simplifying policies and procedures to increase flexibilities for electric borrowers and applicants, minimizing the regulatory impact of applying for loans made or guaranteed by RUS, and facilitating lending for construction of rural electric infrastructure.

II. Summary of Changes to Rule

7 CFR 1710.250 General

The construction work plans and related studies coverages are modified

to include acts of sabotage, willful attacks, accidents, or acts of force majeure as additional events that qualify for emergency repairs before a construction work plan amendment is prepared by the borrower. These modifications will provide borrowers increased flexibility and options to proceed with emergency repair work without losing eligibility for RUS financing.

7 CFR 1710.500 Initial Contact

This change is to correct a citation and is being made to ensure applicants and borrowers are directed to the correct section in the regulation.

7 CFR 1710.501 Loan Application Documents

This change amends the paragraph by removing paragraphs (a)(9) and (13). These deletions will remove certifications that are no longer required to be submitted by applicants. The certifications being removed are part of the Financial Assistance General Certifications and Representations in the System for Award Management that must be completed when applying for an award and updated annually. The remaining paragraphs in § 1710.501(a) will be redesignated accordingly as part of this amendment.

7 CFR 1717.156 Transitional Assistance Affecting Preexisting Loans

Transitional assistance affecting preexisting loans, is amended to replace two incorrect citations in the paragraph. These corrections will ensure borrowers know the correct regulation citation to review.

7 CFR 1721.1 Advances

Paragraphs (b) and (c) are modified to increase the limit for minor projects and projects requiring a contract or work order number. This change is being made to adjust for inflation over time and will provide greater flexibility for borrowers to complete more projects under this process which allows the borrowers to complete needed infrastructure improvements in a timelier fashion.

7 CFR 1726.14 Definitions

The definition of ''Minor modification'' is amended to increase the project cost and the definition of ''Multiparty unit price quotations'' is being deleted. This change will provide borrowers more flexibility to utilize purchase orders or other construction contracts for smaller projects without having to use RUS' standard contract forms.

7 CFR 1726.51 Procurement Methods To Award Contracts for Distribution Line Construction

Paragraph (b)(1) is modified to increase limits, increase Net Utility Plant (NUP) percentages, and delete the ''not to exceed'' limitations. These changes are being made to provide Electric Program borrowers greater flexibility in determining the procurement method that best meets their needs to award construction contracts.

7 CFR 1726.77 Substation and Transmission Line Construction

Paragraph (b)(1) is modified to increase limits, increase Net Utility Plant (NUP) percentages, and delete the ''not to exceed'' limitations. Paragraph (c) is changed to increase contract approval amounts and delete the ''not to exceed'' limitations. These changes are being made to provide Electric Program borrowers greater flexibility in determining the procurement method that best meets their needs to award construction contracts. It will also reduce the number of construction contracts that need to be reviewed and approved by RUS Staff.

7 CFR 1726.125 Generating Plant Facilities

Paragraph (c) is amended to remove an incorrect citation that does not exist in the regulation.

7 CFR 1726.150 Headquarters Buildings

A sentence in paragraph (b) is amended to delete the ''not to exceed'' limitation and increase the percent of NUP from three percent to four percent. These changes are being made to provide borrowers greater flexibility in determining the procurement method that best meets their needs to award construction contracts.

7 CFR 1726.176 Communication and Control Facilities

Paragraph (b) limitations for Load control systems, communications systems, and SCADA systems is modified to increase limits, increase NUP percentages and delete the ''not to exceed'' limitations. These changes are being made to provide Electric Program borrowers greater flexibility in determining the procurement method that best meets their needs to award construction contracts. It will also reduce the number of construction contracts that need to be reviewed and approved by RUS Staff.

7 CFR 1726.204 Multiparty Unit Price Quotations

This section is removed and reserved as a conforming change to a prior streamlining effort. Multiparty Unit Price Quotations are no longer specifically sited or used in the regulations.

7 CFR 1730.24 RUS Review and Evaluation

This section is modified to increase the Operations and Maintenance review period from normally every three years to normally every four years. This change is being made to better match the four-year construction work plan (CWP) period. The Agency will also see savings from reduced travel time due to increasing the review period.

7 CFR 1730.100 OMB Control Number

This section is updated to revise the Office of Management and Budget (OMB) control number.

III. Executive Orders and Acts

Executive Order 12866—Classification

This rulemaking has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rulemaking as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the Rural Electrification Loans and Loan Guarantees Program is 10.850. The Assistance Listings are available on the internet at *https://sam.gov/.*

Executive Order 12372, Intergovernmental Review of Federal Programs

This rulemaking is excluded from the scope of E.O. 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from E.O. 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by E.O. 12372.

Paperwork Reduction Act

This rulemaking contains no new reporting or recordkeeping burdens under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). RUS has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, RUS has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. The Administrative Procedure Act exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. Under section 202 of the UMRA, Federal agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rulemaking contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

It has been determined, under E.O. 13132, Federalism, that the policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RUS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. RUS has determined that the rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If Tribal leaders are interested in consulting with RUS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Relations Team at: *AIAN@usda.gov* to request such a consultation.

E-Government Act Compliance

RD is committed to the E-Government Act of 2002, Public Law 107–347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Civil Rights Impact Analysis

RD has reviewed this rule in accordance with USDA Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to

USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

a. *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

b. *Fax:* (833) 256–1665 or (202) 690–7442; or

c. *Email: program.intake@usda.gov.*

List of Subjects

7 CFR Part 1710

Electric power, Grant programs—energy, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Grant programs—energy, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726 and 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR parts 1710, 1717, 1721, 1726, and 1730 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

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

Subpart F—Construction Work Plans and Related Studies

■ 2. Amend § 1710.250 by revising paragraph (f) to read as follows:

§ 1710.250 General.

* * * * *

(f) In the case of damage caused by storms, natural catastrophes, sabotage, willful attacks, accidents, or acts of force majeure, a borrower may proceed with emergency repair work before a CWP or CWP amendment is prepared by the borrower and approved by RUS, without losing eligibility for RUS financing of the repairs. The borrower must notify RUS in writing after the incident, of its preliminary estimates of damages and repair costs. Not later than 120 days after the incident, the borrower must submit to RUS for approval, a CWP or CWP amendment detailing the repairs.

* * * * *

Subpart I—Application Requirements and Procedures for Loans

■ 3. Amend § 1710.500 by revising paragraph (b) to read as follows:

§ 1710.500 Initial contact.

* * * * *

(b) Before submitting an application for an insured loan the borrower shall ascertain from RUS the amount of supplemental financing required, as set forth in § 1710.110. If the borrower is applying for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a preliminary breakdown of residential consumers either by county, Tribal land or by census tract. Final data must be included with the application. *See* § 1710.501(a)(7).

§ 1710.501 [Amended]

■ 4. Amend § 1710.501 by removing paragraphs (a)(9) and (13) and redesignating paragraphs (a)(10), (11), (12), and (14) through (16) as paragraphs (a)(9) through (14).

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 5. The authority citation for part 1717 continues to read as follows:

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

Subpart D—Mergers and Consolidations of Electric Borrowers

■ 6. Revise § 1717.156 to read as follows:

§ 1717.156 Transitional assistance affecting preexisting loans.

The fund advance period for an insured loan, which is the period during which RUS may advance loan funds to a borrower, terminates automatically after a specific period of time. *See* 7 CFR 1710.602. If, on the effective date the original fund advance period or the fund advance period as extended pursuant to 7 CFR 1710.602(b), on any preexisting RUS loan to any of the active borrowers involved in a merger has not terminated, such fund advance period shall be automatically lengthened by 2 years. However, under no circumstances shall RUS ever make or approve an advance, regardless of the last day for an advance on the loan note or any extension by the Administrator, later than September 30 of the fifth year after the fiscal year of obligation if such date would result in the RUS obligating or permitting advance of funds contrary to the Anti-Deficiency Act. On the borrower's request RUS will prepare documents necessary for the advance of loan funds. RUS will prepare documents for the borrower's execution that will reflect this extension and will provide the legal authority for RUS to advance funds to the successor.

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

■ 7. The authority citation for part 1721 continues to read as follows:

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

Subpart A—Advances

■ 8. Amend § 1721.1 by revising paragraph (b) and paragraph (c) introductory text to read as follows:

§ 1721.1 Advances.

* * * * *

(b) *Minor project.* Minor project means a project costing $250,000 or less. Such a project qualifies for advance of loan funds even though it may not have been included in an RUS-approved borrower's CWP, amendment to such CWP, or approved loan. Total advances requested shall not exceed the total loan amount. All projects for which loan fund advances are requested must be constructed to achieve purposes permitted by terms of the loan contract between the borrower and RUS.

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of $250,000 a contract or work order number as applicable and a CWP cross-reference project coded identification number. For a minor project not included in a RUS approved borrower's CWP or CWP amendment, the Borrower shall describe the project and do one of the following to satisfy

RUS' environmental review requirements in accordance with 7 CFR part 1970:

* * * * *

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 9. The authority citation for part 1726 continues to read as follows:

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

Subpart A—General

■ 10. Amend § 1726.14 by revising the definition of ''Minor modification or improvement'' and removing the definition of ''Multiparty unit price quotations''.

The revision reads as follows:

§ 1726.14 Definitions.

* * * * *

Minor modification or improvement means a project the cost of which is $250,000 or less, exclusive of the cost of owner furnished materials.

* * * * *

Subpart B—Distribution Facilities

■ 11. Amend § 1726.51 by revising paragraph (b)(1) to read as follows:

§ 1726.51 Distribution line construction.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $1,000,000 or four percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment. Borrowers may award Cost-Plus/Hourly contracts as part of these borrower responsibility limits up to a cumulative total of $500,000 or two percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

Subpart C—Substation and Transmission Facilities

■ 12. Amend § 1726.77 by revising paragraphs (b)(1) and (c) to read as follows:

§ 1726.77 Substation and transmission line construction.

* * * * *

(b) * * *

(1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $1,000,000 or four percent of NUP, whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment. Borrowers may award Cost-Plus/Hourly contracts as part of these borrower responsibility limits up to a cumulative total of $500,000 or two percent of NUP, whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

(c) *Contract approval.* Individual contracts in the amount of $1,000,000 or more or four percent of NUP, whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Subpart D—Generation Facilities

■ 13. Amend § 1726.125 by revising paragraph (c) introductory text to read as follows:

§ 1726.125 Generating plant facilities.

* * * * *

(c) *Contract approval.* During the early stages of generating plant design or project design, RUS will, in consultation with the borrower and its consulting engineer, identify the specific contracts which require RUS approval based on information supplied in the plant design manual. The following are typical contracts for each type of generating project which will require RUS approval. Although engineering services are not covered by this part, they are listed in this paragraph to emphasize that RUS approval is required for all major generating station engineering service contracts in accordance with applicable RUS rules. For types of projects not shown, such as nuclear and alternate energy projects, RUS will identify the specific contracts which will require RUS approval on a case-by-case basis.

* * * * *

Subpart E—Buildings

■ 14. Amend § 1726.150 by revising paragraph (b) to read as follows:

§ 1726.150 Headquarters buildings.

* * * * *

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts in amounts of up to a cumulative total of $1,500,000 or four percent of NUP, whichever is greater, per calendar year of headquarters construction (including minor modifications or improvements). The borrower shall use formal competitive bidding for all other headquarters contract construction unless RUS specifically approves an alternative method.

* * * * *

Subpart F—General Plant

■ 15. Amend § 1726.176 by revising paragraphs (b)(2)(i) and (b)(3) to read as follows:

§ 1726.176 Communication and control facilities.

* * * * *

(b) * * *

(2) * * *

(i) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $1,000,000 or four percent of NUP, whichever is greater, per calendar year of communications and control facilities construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

* * * * *

(3) *Contract approval.* Individual contracts in amounts of $1,000,000 or more or four percent of NUP, whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

Subpart G—Procurement Procedures

§ 1726.204 [Removed and Reserved].

■ 16. Remove and reserve § 1726.204.

PART 1730—ELECTRIC SYSTEMS OPERATIONS AND MAINTENANCE

■ 17. The authority citation for part 1730 continues to read as follows:

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

Subpart B—Operations and Maintenance Requirements

■ 18. Revise § 1730.24 to read as follows:

§ 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every four years for all Borrowers. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its complete system. Reports made by other inspectors (*e.g.,* other Federal agencies, State inspectors, etc.) will also be made available, as applicable. RUS will not duplicate these other reviews but will use their reports to supplement its own review. RUS may inspect facilities, as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower. The borrower's management will discuss this review and evaluation with its Board of Directors.

Subpart C—Interconnection of Distributed Resources

■ 19. Revise § 1730.100 to read as follows:

§ 1730.100 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0025.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2024–05076 Filed 3–8–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2023–2441; Special Conditions No. 25–853–SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVIII–G700 and GVIII–G800 Airplanes; Flight Envelope Protection: High-Incidence Protection System (Non-Icing and Icing Conditions)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVIII–G700 and GVIII–G800 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a high-incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES:

Effective date: This action is effective on Gulfstream on March 11, 2024.

Comments due date: Send comments on or before April 25, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2023–2441 using any of the following methods:

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

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Unit, AIR–621A, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION: The anticipated delivery date for these airplane models is imminent. Therefore, the FAA finds, pursuant to 14 CFR 11.38(a), that prior notice and comments would significantly delay delivery of the affected aircraft, so notice and comment prior to this publication are impracticable. Therefore, the FAA is issuing these special conditions as final, request for comments.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special

conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Comments Invited

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

The FAA will consider all comments received by the closing date for comments and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Background

On December 31, 2019, Gulfstream applied for an amendment to Type Certificate No. T00015AT to include the new Model GVIII–G700 and GVIII–G800 series airplanes. These airplanes, which are derivatives of the Model GVI currently approved under Type Certificate No. T00015AT, are twin-engine, transport-category airplanes, with seating for 19 passengers, and a maximum take-off weight of 107,600 (GVIII–G700) pounds and 105,600 pounds (GVIII–G800).

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the Model GVIII–G700 and GVIII–G800 series airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00015AT, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with 14 CFR 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Gulfstream Model GVIII–G700 and GVIII–G800 airplanes will incorporate the following novel or unusual design feature:

A high-incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation, prohibits the airplane from stalling, and cannot be overridden by the flightcrew. The application of this angle of attack limit influences the stall speed determination, stall characteristics, stall warning demonstration, and the longitudinal handling characteristics of the airplane. Existing airworthiness regulations do not contain adequate standards to address this feature.

Discussion

The high-incidence protection system prevents the airplane from stalling at low speeds and, therefore, a stall warning system is not needed during normal flight conditions. However, during failures, which are not shown to be extremely improbable, the requirements of §§ 25.203 and 25.207 apply, although slightly modified by these conditions. If there are failures of the high-incidence protection system that are not shown to be extremely improbable, the flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner.

Part I of the special conditions is in lieu of §§ 25.21(b), 25.103, 25.145(a), 25.145(b)(6), 25.175(c) and (d), 25.201, 25.203, 25.207, and 25.1323(d). Part II is in lieu of §§ 25.21(g)(1), 25.105(a)(2)(i), 25.107(c) and (g), 25.121(b)(2)(ii)(A), 25.121(c)(2)(ii)(A), 25.121(d)(2)(ii), 25.123(b)(2)(i), 25.125(b)(2)(ii)(B), and 25.143(j).

These special conditions are different from previously issued special conditions on this topic. Previously used verbiage was updated to reflect language recommended in the Aviation Rulemaking Advisory Committee (ARAC) Flight Test Harmonization Working Group (FTHWG) Phase 2 report. This language more accurately describes the actions require and formulas to be used to obtain the required result. In certain parts, the ARAC FTHWG language was adapted to further reflect specific Gulfstream design features such as flight envelope protection functions.

These special conditions address this novel or unusual design feature on the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes and contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes. Should Gulfstream apply at a later date for a change to the type certificate to include another model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model GVIII–G700 and GVIII–G800 series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes.

Part I: Stall Protection and Scheduled Operating Speeds

In the following sections, ''in icing conditions,'' means with ice accretions (relative to the relevant flight phase) as defined in appendix C to part 25, at amendment 25–121.

1. Definitions

These special conditions use terminology that does not appear in 14 CFR part 25. For the purpose of these special conditions, the following terms describe certain aspects of this novel or unusual design feature:

High-Incidence Protection System

A system that operates directly and automatically on the airplane's flight controls to limit the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha Limit

The maximum angle of attack at which an airplane stabilizes with the high-incidence protection system operating and the longitudinal control held on its aft stop.

V_{MIN}

The minimum steady flight speed in the airplane's configuration under consideration with the high-incidence protection system operating. See Part I, Section 3, ''Minimum Steady Flight Speed and Reference Stall Speed,'' of these special conditions.

V_{MIN1g}

V_{MIN} corrected to 1g acceleration of gravity conditions. See Part I, Section 3, ''Minimum Steady Flight Speed and Reference Stall Speed,'' of these special conditions. This is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{MIN}.

2. Capability and Reliability of the High-Incidence Protection System

The applicant must establish the capability and reliability of the high-incidence protection system. The applicant may establish this capability and reliability by flight testing, simulation, or analysis as appropriate. The capability and reliability required are:

a. It must not be possible to encounter a stall during the pilot-induced maneuvers required by Part I, section 5(a), ''High Incidence Handling Demonstrations,'' and the handling characteristics must be acceptable as required by Part I, section 5(b), ''Characteristics in High Incidence Maneuvers'' of these special conditions;

b. The airplane must be protected against stalling due to the effects of wind shears and gusts at low speeds as required by Section 6, ''Atmospheric Disturbances'' of these special conditions;

c. The ability of the high-incidence protection system to accommodate any reduction in stalling incidence must be verified in icing conditions;

d. The high-incidence protection system must be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures; and

e. The reliability of the system and the effects of failures must be acceptable in accordance with § 25.1309.

3. Minimum Steady Flight Speed and Reference Stall Speed

In lieu of § 25.103, ''Stall speed,'' the following applies:

a. The minimum steady flight speed, V_{MIN}, is the final, stabilized, calibrated airspeed obtained when an airplane is decelerated until the longitudinal control is on its stop in such a way that the entry rate does not exceed 1 knot per second.

b. The minimum steady flight speed, V_{MIN}, must be determined in icing and non-icing conditions with:

i. The high-incidence protection system operating normally;

ii. Idle thrust and automatic thrust system (if applicable) inhibited;

iii. All combinations of flap settings and landing gear positions for which V_{MIN} is required to be determined;

iv. The weight used when the reference stall speed, V_{SR}, is used as a factor to determine compliance with a required performance standard;

v. The most unfavorable center of gravity (CG) allowable; and

vi. The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

c. The 1g minimum steady flight speed, V_{MIN1g}, is the minimum calibrated airspeed at which an airplane can develop a lift force (normal to the flight path) equal to its weight, while at an angle of attack not greater than that at which the minimum steady flight speed referenced in section 3(a) of this special condition is determined. These minimum calibrated airspeeds must be determined for both icing and non-icing conditions.

d. The reference stall speed, V_{SR}, is a calibrated airspeed defined by the applicant. V_{SR} may not be less than a 1g stall speed. V_{SR} must be determined in non-icing conditions and expressed as:

$$V_{SR} \geq \frac{V_{CLMAX}}{\sqrt{n_{ZW}}}$$

Where:

V_{CLMAX} = calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{ZW}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in section 3(e)(vii) of this special condition.

n_{ZW} = Load factor normal to the flight path at V_{CLMAX}

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

e. V_{CLMAX} is determined in non-icing conditions with:

i. Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed;

ii. The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used;

iii. The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard;

iv. The CG position that results in the highest value of the reference stall speed;

v. The airplane trimmed for straight flight at a speed selected by the applicant, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR};

vi. The high-incidence protection system adjusted, at the option of the applicant, to allow high incidence than is possible with the normal production system; and

vii. Starting from the stabilized trim condition, with an application of the longitudinal control to decelerate the airplane so that the speed reduction does not exceed 1 knot per second.

4. Stall Warning

In lieu of § 25.207, the following apply:

a. Normal Operation

If the design meets all conditions of Part I, section 2 of these special conditions, then the airplane need not provide stall warning during normal operation. The conditions of Part I, section 2 provide a level of safety equal to the intent of § 25.207, ''Stall warning,'' so the provision of an additional, unique warning device for normal operations is not required.

b. High-Incidence Protection System Failure

For any failures of the high-incidence protection system that the applicant

cannot show to be extremely improbable, and that result in the capability of the system no longer satisfying any part of sections 2(a), (b), and (c) of Part I of these special conditions: The design must provide stall warning that protects against encountering unacceptable characteristics and against encountering stall.

i. This stall warning, with the flaps and landing gear in any normal position, must be clear and distinctive to the pilot, and must meet the requirements specified in sections 4(b)(iv) and 4(b)(v) of Part I of these special conditions.

ii. The design must also provide this stall warning in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures.

iii. The design may furnish this stall warning either through the inherent aerodynamic qualities of the airplane or by a device that will provide clearly distinguishable indications to the flightcrew under all expected conditions of flight. However, a visual stall warning device that requires the attention of the flightcrew within the flight deck is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in section 4(b)(i), above, and for the conditions prescribed in sections 4(b)(iv) and 4(b)(v) of part I of these special conditions.

iv. In non-icing conditions, the stall warning must provide sufficient margin to prevent encountering unacceptable characteristics and encountering stall in the following conditions:

1. In power-off straight deceleration not exceeding 1 knot per second to a speed of 5 knots or 5 percent calibrated airspeed (CAS), whichever is greater, below the warning onset; and

2. In turning flight, stall deceleration at entry rates up to 3 knots per second when recovery is initiated not less than 1 second after the warning onset.

v. In icing conditions, the stall warning must provide sufficient margin to prevent encountering unacceptable characteristics and encountering stall in power-off straight and turning flight decelerations not exceeding 1 knot per second, when the pilot starts a recovery maneuver not less than three seconds after the onset of stall warning.

vi. An airplane is considered stalled when the behavior of the airplane gives the pilot a clear, distinctive, and acceptable indication that the airplane is stalled. Acceptable indications of a stall, occurring either individually or in combination, are:

1. A nose-down pitch that cannot be readily arrested;

2. Buffeting of a magnitude and severity that is strong and thereby an effective deterrent to further speed reduction; or

3. The pitch control reaches the aft stop, and no further increase in pitch attitude occurs when the control is held full aft for a short time before recovery is initiated.

vii. An airplane exhibits unacceptable characteristics during straight or turning flight decelerations if it is not always possible to produce and to correct roll and yaw by unreversed use of aileron and rudder controls, or abnormal nose-up pitching occurs.

5. Handling Characteristics at High Incidence

a. High Incidence Handling Demonstrations

In lieu of § 25.201, ''Stall demonstration,'' the following is required:

i. Maneuvers to the limit of the longitudinal control, in nose-up pitch, must be demonstrated in straight flight and in 30-degree banked turns with:

1. The high-incidence protection system operating normally;

2. Initial power conditions of:

a. Power off; and

b. Power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with flaps in approach position, landing gear retracted, and maximum landing weight;

3. None;

4. Flaps, landing gear, and deceleration devices in any likely combination of positions not prohibited by the airplane flight manual (AFM);

5. Representative weights within the range for which certification is requested;

6. The most adverse CG for recovery; and

7. The airplane trimmed for straight flight at the speed prescribed in section 3(e)(v) of these special conditions.

ii. The following procedures must be used to show compliance in non-icing and icing conditions:

1. Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed 1 knot per second until the control reaches the stop.

2. The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

3. Maneuvers with increased deceleration rates:

a. In non-icing conditions, the requirements must also be met with increased rates of entry to the incidence limit, up to the maximum rate achievable.

b. In icing conditions, with the anti-ice system working normally, the requirements must also be met with increased rates of entry to the incidence limit, up to three knots per second.

4. Maneuvers with ice accretion prior to normal operation of the ice protection system: For flight in icing conditions before the ice protection system has been activated and is performing its intended function, the handling demonstration requirements identified in section 5(a)(i) must be satisfied using the procedures specified in sections 5(a)(ii)(1) and 5(a)(ii)(2) of these special conditions. The airplane configurations required to be tested must be in accordance with the limitations and procedures for operating the ice protection system provided in the AFM, per § 25.21(g)(1), as modified by and Part II of these special conditions.

b. Characteristics in High Incidence Maneuvers

In lieu of § 25.203, ''Stall characteristics,'' the following apply:

i. Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30-degree banked turns, the airplane's characteristics must be as follows:

1. There must not be any abnormal nose-up pitching;

2. There must not be any uncommanded nose-down pitching, which would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at Alpha limit, as the longitudinal control reaches the stop would be acceptable;

3. There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the controls throughout the maneuver; and

4. The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent from completing the maneuver specified in section 5(a)(i) of these special conditions.

ii. In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized Alpha limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the

longitudinal control on the stop for a period of time appropriate to the maneuver.

iii. It must always be possible for flightcrew to reduce incidence by conventional use of the controls.

iv. The rate at which the airplane can be maneuvered from trim speeds, associated with scheduled operating speeds such as V_2 and V_{REF} up to Alpha limit, must not be unduly damped or be significantly slower than can be achieved on conventionally controlled transport airplanes.

c. Characteristics up to the Maximum Lift Angle of Attack

In addition to the requirements in section 5(b) of this special condition, the following requirements apply:

i. In non-icing conditions, maneuvers with a rate of deceleration of not more than 1 knot per second, up to the angle of attack corresponding to V_{SR} obtained using sections 3(d) and (e) of this special condition, must be demonstrated in straight flight and in 30-degree banked turns in the following configurations:

1. The high-incidence protection system deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

2. Automatic-thrust-increase system inhibited (if applicable);

3. Engines idling;

4. Flaps, landing gear, and deceleration devices in any likely combination of positions not prohibited by the AFM;

5. The most adverse CG for recovery; and

6. The airplane trimmed for straight flight at the speed prescribed in section 3(e)(v) of this special condition.

ii. In icing conditions, maneuvers with a rate of deceleration of not more than 1 knot per second up to the maximum angle of attack reached during maneuvers from section 5(a)(ii)(3)(b) must be demonstrated in straight flight with:

1. The high-incidence protection system deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

2. Automatic-thrust-increase system inhibited (if applicable);

3. Engines idling;

4. Flaps, landing gear, and deceleration devices in any likely combination of positions not prohibited by the AFM;

5. The most adverse CG for recovery; and

6. The airplane trimmed for straight flight at the speed prescribed in section 3(e)(v) of this special condition.

iii. During the maneuvers used to show compliance with sections 5(c)(i) and 5(c)(ii) of Part I of these special conditions, the airplane must not exhibit dangerous characteristics and it must always be possible for flightcrew to reduce angle of attack by conventional use of the controls. The pilot must retain good lateral and directional control, by conventional use of the controls, throughout the maneuver.

6. Atmospheric Disturbances

Operation of the high-incidence protection system must not adversely affect airplane control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind shear. This must be demonstrated in non-icing and icing conditions.

7. None

8. Proof of Compliance

Add the following requirement to that of § 25.21:

(b) The flying qualities will be evaluated at the most unfavorable CG position.

9. The Design Must Meet the Following Modified Requirements

14 CFR section	Change
25.145(a)	"V_{MIN}" in lieu of "stall identification."
25.145(b)(6)	"V_{MIN}" in lieu of "V_{SW}."
25.175(c) and (d)	"V_{MIN}" in lieu of "V_{SW}."
25.1323(d)	"From 1.23 V_{SR} to V_{MIN}" in lieu of "From 1.23 V_{SR} to the speed at which stall warning begins;" and "speeds below V_{MIN}" in lieu of "speeds below stall warning speed."

Part II: Credit for Robust Envelope Protection in Icing Conditions

1. In lieu of § 25.21(g)(1), the following applies:

(g) The requirements of this subpart associated with icing conditions apply only if certification for flight in icing conditions is desired. If certification for flight in icing conditions is desired, the following requirements also apply (see AC 25–25):

(1) Each requirement of this subpart, except §§ 25.121(a), 25.123(c), 25.143(b)(1) and (b)(2), 25.149, 25.201(c)(2), 25.207(c) and (d), and 25.251(b) through (e), must be met in icing conditions. Compliance must be shown using the ice accretions defined in appendix C to part 25, assuming normal operation of the airplane and its ice protection system in accordance with the operating limitations and operating procedures established by the applicant and provided in the airplane flight manual.

2. In lieu of § 25.103, ''Stall speed,'' define the stall speed as provided in Special Conditions Part I, section 3, ''*Minimum Steady Flight Speed and Reference Stall Speed.*''

3. In lieu of § 25.105(a)(2)(i) to read as follows:

(2) In icing conditions, if in the configuration of § 25.121(b) with the ''Takeoff Ice'' accretion defined in appendix C to part 25:

(i) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration, or

4. In lieu of § 25.107(c) and (g), the following apply, with additional sections (c′) and (g′):

(c) In non-icing conditions, V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(b) but may not be less than—

1. V_{2MIN};

2. V_R plus the speed increment attained (in accordance with § 25.111(c)(2)) before reaching a height of 35 feet above the takeoff surface; and

3. A speed that provides the maneuvering capability specified in § 25.143(h).

(c′) In icing conditions with the ''Takeoff Ice'' accretion defined in appendix C to part 25, V_2 may not be less than—

1. The V_2 speed determined in non-icing conditions.

2. A speed that provides the maneuvering capability specified in § 25.143(h).

(g) In non-icing conditions, V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

1. 1.18 V_{SR}; and

2. A speed that provides the maneuvering capability specified in § 25.143(h).

(g′) In icing conditions with the ''Final Takeoff Ice'' accretion defined in appendix C to part 25, V_{FTO} may not be less than—

1. The V_{FTO} speed determined in non-icing conditions.

2. A speed that provides the maneuvering capability specified in § 25.143(h).

5. In lieu of §§ 25.121(b)(2)(ii)(A), 25.121(c)(2)(ii)(A), and 25.121(d)(2)(ii), the following apply:

§ 25.121 Climb: One-Engine Inoperative

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted, and in the configuration used in § 25.111, but without ground effect,

* * * * *

2. The requirements of subparagraph (b)(1) of this section must be met:

* * * * *

(ii) In icing conditions with the ''Takeoff Ice'' accretion defined in appendix C of part 25, if in the configuration of § 25.121(b) with the ''Takeoff Ice'' accretion:

(A) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration; or

(c) Final takeoff. In the en route configuration at the end of the takeoff path determined in accordance with § 25.111:

* * * * *

2. The requirements of subparagraph (c)(1) of this section must be met:

* * * * *

(ii) In icing conditions with the ''Final Takeoff Ice'' accretion defined in appendix C of part 25, if:

(A) The V_{FTO} speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en route configuration; or

(d) Approach. In a configuration corresponding to the normal all-engines operating procedure in which VSR for this configuration does not exceed 110 percent of the VSR for the related all-engines-operating landing configuration:

* * * * *

2. The requirements of sub-paragraph (d)(1) of this section must be met:

* * * * *

(ii) In icing conditions with the ''Approach Ice'' accretion defined in appendix C to part 25, in a configuration corresponding to the normal all-engines-operating procedure in which V_{MIN1g} for this configuration does not exceed 110% of the V_{MIN1g} for the related all engines-operating landing configuration in icing, with a climb speed established with normal landing procedures, but not more than 1.4 V_{SR} (V_{SR} determined in non-icing conditions).

6. In lieu of § 25.123(b)(2)(i), the following applies:

§ 25.123 En Route Flight Paths

(b) The one-engine-inoperative net flight path data must represent the actual climb performance diminished by a gradient of climb of 1.1 percent for two-engine airplanes, 1.4 percent for three-engine airplanes, and 1.6 percent for four-engine airplanes.

* * * * *

2. In icing conditions with the ''En route Ice'' accretion defined in appendix C to part 25 if:

(i) The minimum en route speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en route configuration, or

7. In lieu of § 25.125(b)(2)(ii)(B) and § 25.125(b)(2)(ii)(C), the following applies:

§ 25.125 Landing

(b) In determining the distance in (a):

* * * * *

2. A stabilized approach, with a calibrated airspeed of not less than V_{REF}, must be maintained down to the 50-foot height.

* * * * *

(ii) In icing conditions, V_{REF} may not be less than:

(A) The speed determined in sub-paragraph (b)(2)(i) of this section;

(B) A speed that provides the maneuvering capability specified in § 25.143(h) with the ''Landing Ice'' accretion defined in appendix C to part 25.

8. In lieu of § 25.143(j), the following applies:

§ 25.143 General

(j) For flight in icing conditions before the ice protection system has been activated and is performing its intended function the following requirements apply:

(1) If activating the ice protection system depends on the pilot seeing a specified ice accretion on a reference surface (not just the first indication of icing), the requirements of § 25.143 apply with the ice accretion defined in part II(e) of appendix C to part 25.

(2) For other means of activating the ice protection system, it must be demonstrated in flight with the ice accretion defined in part II(e) of appendix C to part 25 that:

(i) The airplane is controllable in a pull-up maneuver up to 1.5 g load factor or lower if limited by angle of attack protection; and

(ii) There is no reversal of pitch control force during a pushover maneuver down to 0.5 g load factor.

9. In lieu of § 25.207, ''Stall warning,'' to read as the requirements defined in Part I of these special conditions.

Issued in Kansas City, Missouri, on March 5, 2024.

James David Foltz,

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

[FR Doc. 2024–05043 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2362; Airspace Docket No. 23–AEA–25]

RIN 2120–AA66

Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Clarksburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace and revokes Class E airspace at Clarksburg, WV. This action is the result of a biennial airspace review. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/*

publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace and Class E airspace extending upward from 700 feet above the surface and revokes the Class E airspace designated as an extension to Class D airspace at North Central West Virginia Airport, Clarksburg, WV, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2362 in the **Federal Register** (88 FR 88550; December 22, 2023) proposing to amend the Class D and Class E airspace and revoke Class E airspace at Clarksburg, WV. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71:

Modifies the Class D airspace extending upward from the surface up to and including 3,700 feet MSL to within a 7.1-mile (increased from 4.1-mile) radius of the North Central West Virginia Airport, Clarksburg, WV, excluding that airspace within a 1-mile radius of Wade F. Maley Field, Shinnston, WV; and updates the outdated terms ''Notice to Airmen'' and ''Airport Facility Directory'' to ''Notice to Air Missions'' and ''Chart Supplement'';

Revokes the Class E airspace designated as an extension to Class D airspace at North Central West Virginia Airport as it is no longer required;

And modifies the Class E airspace extending upward from 700 feet above the surface to within a 9.6-mile (increased from an 8.9-mile) radius of North Central West Virginia Airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 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 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA WV D Clarksburg, WV [Amended]

North Central West Virginia Airport, WV
(Lat. 39°17′52″ N, long. 80°13′39″ W)
Wade F. Maley Field, WV
(Lat. 39°24′22″ N, long. 80°16′37″ W)

That airspace extending upward from the surface up to and including 3,700 feet within a 7.1-mile radius of North Central West Virginia Airport excluding that airspace within a 1-mile radius of Wade F. Maley Field. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designates as an Extension to a Class D or Class E Surface Area.

* * * * *

AEA WV E4 Clarksburg, WV [Remove]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA WV E5 Clarksburg, WV [Amended]

North Central West Virginia Airport, WV
(Lat. 39°17′52″ N, long. 80°13′39″ W)

That airspace extending upward from 700 feet above the surface within an 9.6-mile radius of North Central West Virginia Airport.

* * * * *

Issued in Fort Worth, Texas, on March 6, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–05077 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0154]

RIN 1625–AA00

Safety Zone; Indian Island, Port Townsend Bay, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters West of Indian Island in Port Townsend Bay, Washington. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a naval exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Puget Sound.

DATES: This rule is effective from 7 a.m. on March 12, 2024, through 7 p.m. March 14, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0154 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 about this rule, call or email LTJG Kaylee Lord, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port of Sector Puget Sound
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to publish a notice of proposed rulemaking regarding the movement of United States Navy vessels undergoing national security exercises in advance, as some of the movements are classified. It is impracticable for the Coast Guard to publish an NPRM because we must establish this safety zone by March 12, 2024 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Also, 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 potential safety hazards associated with the naval exercise.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Puget Sound (COTP) has determined that potential hazards associated with the naval exercise starting March 12, 2024, will be a safety concern for anyone within a 100-yard radius of the exercise area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the exercise is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on March 12, 2024 through 7 p.m. on March 14, 2024. The safety zone will cover all navigable waters bounded by the following coordinates: commencing west of Indian Island at latitude 48°4′13.3″ N, longitude 122°46′37.5″ W: thence northernly to latitude 48°5′43.6″ N, longitude 122°47′4.1″ W: thence easterly to latitude 48°5′43.6″ N, longitude 122°44′49.3″ W: thence south easterly to latitude 48°5′17.7″ N, longitude 122°44′40.5″ W: thence south westerly to latitude 48°4′51.8″ N, longitude 122°45′19.1″ W: thence south easterly to latitude 48°2′43.8″ N, longitude 122°44′41.6″ W: thence westerly to latitude 48°2′37.1″ N, longitude 122°45′33.5″ W: thence northerly to latitude 48°3′35.6″ N, longitude 122°45′50″ W to the point of beginning.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the exercise is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The regulated area consists of all navigable waterways within 100 yards of the established area in Port Townsend Bay, WA as previously listed. The safety zone will be enforced for a maximum of 36 hours total and thus is limited in time and scope. Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, vessel traffic will be able to safely transit around this safety zone and the rule will allow vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 36 hours that will prohibit entry within 100 yards of the designated area around the naval exercise. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–0154 to read as follows:

§ 165.T13–0154 Safety Zone; Sector Puget Sound Captain of the Port Zone, Indian Island, Port Townsend Bay, Washington.

(a) *Location.* The following area is a safety zone: all navigable waters bounded by the following coordinates: commencing west of Indian Island at latitude 48°4′13.3″ N, longitude 122°46′37.5″ W: thence northernly to latitude 48°5′43.6″ N, longitude 122°47′4.1″ W: thence easterly to latitude 48°5′43.6″ N, longitude 122°44′49.3″ W: thence south easterly to latitude 48°5′17.7″ N, longitude 122°44′40.5″ W: thence south westerly to latitude 48°4′51.8″ N, longitude 122°45′19.1″ W: thence south easterly to latitude 48°2′43.8″ N, longitude 122°44′41.6″ W: thence westerly to latitude 48°2′37.1″ N, longitude 122°45′33.5″ W: thence northerly to latitude 48°3′35.6″ N, longitude 122°45′50″ W to the point of beginning.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including 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 Puget Sound (COTP) in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the COTP or designated representative.

(d) *Authorization.* In order to transit through this safety zone, authorization must be granted by the COTP or their designated representative. All vessel operators desiring entry into this safety zone shall gain authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002. Requests shall indicate the reason why movement within the safety zone is

necessary and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

(e) *Enforcement period.* This rule will be enforced from 7 a.m. March 12, 2024 through 7 p.m. March 14, 2024.

Dated: March 4, 2024.

Mark A. McDonnell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Puget Sound.

[FR Doc. 2024–05130 Filed 3–8–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0576; FRL–11679–02–R1]

Air Plan Approval; New Hampshire; Single Source Order for PAK Solutions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes reasonable available control technology (RACT) requirements for PAK Solutions, LLC, located in Lancaster, New Hampshire. This action is being taken under the Clean Air Act.

DATES: This rule is effective on April 10, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2023–0576. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Patrick Lillis, Air Quality Branch (AQB), Air and Radiation Division (ARD) (Mail Code 5–MI), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1067; *lillis.patrick@epa.gov.*

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

Table of Contents

I. Background and Purpose

On January 23, 2024 (40 CFR part 52), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of an order establishing reasonably available control technology (RACT) requirements for PAK Solutions, LLC, located in Lancaster, New Hampshire. The RACT requirements are intended to limit emissions of volatile organic chemicals (VOCs) from the facility. The formal SIP revision was submitted by New Hampshire on December 14, 2022.

Other specific requirements of New Hampshire's RACT orders and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving the order establishing RACT requirements for PAK Solutions, LLC as a revision to the New Hampshire SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference RACT Order RO–0007 dated December 14, 2022, issued by the New Hampshire DES to PAK Solutions LLC as discussed in section I of this preamble and described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The New Hampshire DES did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 5, 2024.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart EE—New Hampshire

■ 2. In § 52.1520(d), amend the table by adding an entry, at the end of the table, for ''PAK Solutions LLC'' to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Additional explanations/ § 52.1535 citation
*	*	*	*	*
PAK Solutions LLC	RACT Order RO–0007	December 14, 2022	March 11, 2024 [Insert **Federal Register** Citation].	VOC RACT Order.

* * * * *

[FR Doc. 2024–05072 Filed 3–8–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

Principles of Reasonable Cost Reimbursement; Payment for End-Stage Renal Disease Services; Prospectively Determined Payment Rates for Skilled Nursing Facilities; Payment for Acute Kidney Injury Dialysis

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 42 of the Code of Federal Regulations, Parts 400 to 413, revised as of October 1, 2023, amend section 413.404 by reinstating paragraphs (b)(3)(ii)(C)(*4*) through (*7*) to read as follows:

§ 413.404 Standard acquisition charge.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) * * *

(*4*) Costs of tissue typing services, including those furnished by independent laboratories.

(*5*) Organ preservation and perfusion costs.

(*6*) General routine and special care service costs (for example, intensive care unit or critical care unit services related to the donor).

(*7*) Operating room and other inpatient ancillary service costs.

* * * * *

[FR Doc. 2024–05210 Filed 3–8–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068]

RTID 0648–XD454

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2024 and 2025 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces the final 2024 and 2025 harvest specifications, apportionments, and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the remainder of the 2024 and the start of the 2025 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the BSAI (FMP). The 2024 harvest specifications supersede those previously set in the final 2023 and 2024 harvest specifications, and the 2025 harvest specifications will be superseded in early 2025 when the final 2025 and 2026 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Harvest specifications and closures are effective from 1200 hours, Alaska local time (A.l.t.), March 11, 2024, through 2400 hours, A.l.t., December 31, 2025.

ADDRESSES: Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD), and the annual Supplementary Information Reports (SIR) to the Final EIS prepared for this action are available from *https://www.fisheries.noaa.gov/region/alaska.* The 2023 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2023, as well as the SAFE reports for previous years, are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Ave., Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from the Council's website at *https://www.npfmc.org/,* and the Alaska Fisheries Science Center website at *https://www.fisheries.noaa.gov/alaska/population-assessments/north-pacific-groundfish-stock-assessments-and-fishery-evaluation.*

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared, and NMFS approved, the FMP pursuant to the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species category. The sum of all TACs for groundfish species in the BSAI must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see §§ 679.20(a)(1)(i)(A) and 679.20(a)(2)). This final rule specifies the sum of the TAC at 2.0 million mt for 2024 and 2.0 million mt for 2025. NMFS also must specify: (1) apportionments of TAC; (2) prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves established by § 679.21; (3) seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; (4) American Fisheries Act (AFA) allocations; (5) Amendment 80 allocations; (6) Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii); (7) acceptable biological catch (ABC) surpluses and reserves for CDQ groups and any Amendment 80 cooperatives for flathead sole, rock sole, and yellowfin sole; and (8) halibut discard mortality rates (DMR). The final harvest specifications set forth in tables 1 through 26 of this action satisfy these requirements.

Section 679.20(c)(3)(i) further requires that NMFS consider public comment on the proposed harvest specifications and, after consultation with the Council, publish final harvest specifications in the **Federal Register**. The proposed 2024 and 2025 harvest specifications for the groundfish fishery of the BSAI were published in the **Federal Register** on December 5, 2023 (88 FR 84278). Comments were invited and accepted through January 4, 2024. As discussed in the Response to Comments section below, NMFS received 5 letters raising 17 distinct comments during the public comment period for the proposed BSAI groundfish harvest specifications. NMFS's responses are addressed in the Response to Comments section below.

NMFS consulted with the Council on the final 2024 and 2025 harvest specifications during the December 2023 Council meeting. After considering public comments during public meetings and submitted for the proposed rule (88 FR 84278, December 5, 2023), as well as current biological, ecosystem, and socioeconomic data, NMFS implements in this final rule the final 2024 and 2025 harvest specifications as recommended by the Council.

ABC and TAC Harvest Specifications

The final ABC amounts for Alaska groundfish are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFL) involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest.

In December 2023, the Council, its Scientific and Statistical Committee (SSC), and its Advisory Panel (AP) reviewed current biological, ecosystem, socioeconomic, and harvest information about the condition of the BSAI groundfish stocks. The Council's BSAI Groundfish Plan Team (Plan Team) compiled and presented this information in the 2023 SAFE report for the BSAI groundfish fisheries, dated November 2023 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. NMFS notified the public of the comment period for these harvest specifications—and of the publication of the 2023 SAFE report—in the proposed harvest specifications (88 FR 84278, December 5, 2023). From the data and analyses in the SAFE report, the Plan Team recommended an OFL and ABC for each species and species group at the November 2023 Plan Team meeting.

In December 2023, the SSC, AP, and Council reviewed the Plan Team's recommendations. The final TAC recommendations were based on the ABCs, and were adjusted for other biological and socioeconomic considerations, including the maintenance of the sum of all the TACs within the required OY range of 1.4 million to 2.0 million mt. As required by annual catch limit rules for all fisheries (74 FR 3178, January 16, 2009) and consistent with the FMP, none of the Council's recommended 2024 or 2025 TACs exceed the final 2024 or 2025 ABCs for any species or species group. NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the preferred harvest strategy outlined in the FMP, as well as the Final EIS and ROD, and the biological condition of groundfish stocks as described in the 2023 SAFE report that was approved by the Council, while accounting for ecosystem and socioeconomic information presented in the 2023 SAFE report (which includes the Ecosystem Status Reports (ESR)). Therefore, this final rule provides notification that the Secretary of Commerce approves the final 2024 and 2025 harvest specifications as recommended by the Council.

The 2024 harvest specifications set in this final action supersede the 2024 harvest specifications previously set in the final 2023 and 2024 harvest specifications (88 FR 14926, March 10, 2023). The 2024 harvest specifications herein will be superseded in early 2025 when the final 2025 and 2026 harvest specifications are published. Pursuant to this final action, the 2024 harvest specifications will apply for the remainder of the current year (2024) while the 2025 harvest specifications are projected only for the following year (2025) and will be superseded in early 2025 by the final 2025 and 2026 harvest specifications. Because this final action (published in early 2024) will be superseded in early 2025 by the publication of the final 2025 and 2026 harvest specifications, it is projected that this final action will implement the harvest specifications for the BSAI for approximately 1 year.

Other Actions Affecting the 2024 and 2025 Harvest Specifications

State of Alaska Guideline Harvest Levels

For 2024 and 2025, the Board of Fisheries (BOF) for the State of Alaska (State) established the guideline harvest level (GHL) for vessels using pot, longline, jig, and hand troll gear in State waters in the State's Aleutian Islands (AI) State waters sablefish registration area that includes all State waters west of Scotch Cap Light (164° 44.72′ W longitude) and south of Cape Sarichef (54° 36′ N latitude). The 2024 AI GHL is set at 5 percent (1,228 mt) of the combined 2024 Bering Sea subarea (BS) and AI subarea ABC (mt). The 2025 AI GHL is set at 5 percent (1,233 mt) of the combined 2025 BS subarea and AI subarea ABC (mt). The State's AI sablefish registration area includes areas adjacent to parts of the Federal BS subarea. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal waters sablefish removals from the BS and AI not exceed the ABC recommendations for sablefish in the BS and AI. Accordingly, after reviewing the Council recommendations, NMFS approves that the 2024 and 2025 sablefish TACs in the BS and AI account for the State's GHLs for sablefish caught in State waters.

For 2024 and 2025, the BOF for the State established the GHL for vessels using pot gear in State waters in the BS equal to 12 percent of the Pacific cod ABC in the BS. Under the State's management plan, the BS GHL will increase by 1 percent if 90 percent of the GHL is harvested by November 15 of the preceding year for two consecutive years but may not exceed 15 percent of the BS ABC. If 90 percent of the GHL is not harvested by November 15 of the preceding year for two consecutive years, the GHL will decrease by 1 percent, but the GHL may not decrease below 10 percent of the BS ABC. For 2024, the BS Pacific cod ABC is 167,952 mt, and for 2025, it is 150,876 mt. Therefore, based on the preceding years' harvests, the GHL in the BS for pot gear will be 12 percent for 2024 (20,154 mt) and is projected to be 12 percent for 2025 (18,105 mt). Also, for 2024 and 2025, the BOF established an additional GHL for vessels using jig gear in State waters in the BS equal to 45 mt of Pacific cod in the BS. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal waters Pacific cod removals from the BS not exceed the ABC recommendations for Pacific cod in the BS. Accordingly, after reviewing the Council recommendations, NMFS approves that the 2024 and 2025 Pacific cod TACs in the BS account for the State's GHLs for Pacific cod caught in State waters in the BS.

For 2024 and 2025, the BOF for the State established the GHL for Pacific cod in State waters in the AI equal to 35 percent of the AI ABC. Under the State's management plan, the AI GHL will increase annually by 4 percent of the AI ABC if 90 percent of the GHL is harvested by November 15 of the preceding year, but may not exceed 39 percent of the AI ABC or 15 million pounds (6,804 mt). If 90 percent of the GHL is not harvested by November 15 of the preceding year for two consecutive years, the GHL will decrease by 4 percent, but the GHL may not decrease below 15 percent of the AI ABC. For 2024 and for 2025, 35 percent of the AI ABC is 4,351 mt. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal waters Pacific cod removals from the AI not exceed the ABC recommendations for Pacific cod in the AI. Accordingly, after reviewing the Council's recommendations, NMFS approves that the 2024 and 2025 Pacific cod TACs in the AI account for the

State's GHL for Pacific cod caught in State waters in the AI.

Halibut Abundance Based Management for the Amendment 80 Program PSC Limit

On November 24, 2023, NMFS published a final rule to implement Amendment 123 to the FMP (88 FR 82740), which establishes abundance-based management of the Amendment 80 Program PSC limit for Pacific halibut. The final action replaces the current Amendment 80 sector static halibut PSC limit (1,745 mt) with a process for annually setting the Amendment 80 sector halibut PSC limit based on the most recent halibut abundance estimates from the International Pacific Halibut Commission (IPHC) setline survey index and the NMFS Alaska Fisheries Science Center Eastern Bering Sea shelf trawl survey index. The annual process will use a table with pre-established halibut abundance ranges based on those surveys (Table 58 to 50 CFR part 679). The annual Amendment 80 sector halibut PSC limit will be set at the value found at the intercept of the results from the most recent survey indices. The final 2024 and 2025 harvest specifications announce the Amendment 80 halibut PSC limit based on the implementation of Amendment 123 and regulations effective January 1, 2024.

Pacific Cod Trawl Cooperative Limited Access Privilege Program

On August 8, 2023, NMFS published a final rule to implement Amendment 122 to the FMP (88 FR 53704, effective September 7, 2023) (see also correction 88 FR 57009, August 22, 2023). The final rule establishes a limited access privilege program called the Pacific Cod Trawl Cooperative (PCTC) Program. The PCTC Program allocates Pacific cod quota share (QS) to groundfish License Limitation Program license holders and to processors based on history during the qualifying years. Under this program, QS holders are required to join cooperatives annually. Cooperatives are allocated the BSAI trawl catcher vessel sector's A and B seasons Pacific cod allocation as an exclusive harvest privilege in the form of cooperative quota (CQ), equivalent to the aggregate QS of all cooperative members. Amendment 122 also reduces the halibut and crab PSC limits for the BSAI trawl catcher vessel (CV) Pacific cod fishery, changes the AFA CV sideboard limit for Pacific cod to apply in the C season only, and removes the halibut PSC sideboard limit for AFA trawl CVs. Accordingly, Amendment 122 and its implementing regulations affect the calculation of the BSAI trawl CV sector allocation of Pacific cod (discussed in a subsequent section of this rule titled ''Allocation of the Pacific Cod TAC'') and the BSAI trawl limited access sector crab and halibut PSC limits (discussed in two subsequent sections of this rule titled ''PSC Limits for Halibut, Salmon, Crab, and Herring'' and ''AFA Catcher Vessel Sideboard Limits''). Amendment 122 also removed the regulations at § 679.20(a)(7)(viii) for Amendment 113 to the FMP because the U.S. District Court for the District of Columbia vacated the rule implementing Amendment 113 (see *Groundfish Forum* v. *Ross,* 375 F.Supp.3d 72 (D.D.C. 2019)).

Changes From the Proposed 2024 and 2025 Harvest Specifications for the BSAI

In October 2023, the Council's recommendations for the proposed 2024 and 2025 harvest specifications (88 FR 84278, December 5, 2023) were based largely on information contained in the 2022 SAFE report for the BSAI groundfish fisheries, dated November 2022. Stocks are managed in tiers based on the amount and quality of information available. There is more information available about stocks in tiers 1 through 3 than is available for those in tiers 4 through 6. In October 2023, the Council recommended that proposed 2024 and 2025 OFLs and ABCs be based on rollovers of the 2024 amounts. In making this recommendation, the Council used the best information available from the 2022 stock assessments until the 2023 SAFE report could be completed.

In December 2023, the Council's recommendations for the final 2024 and 2025 harvest specifications were based largely on information contained in the 2023 SAFE report for the BSAI groundfish fisheries, dated November 2023. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem by including risk tables and information from the BS ESR and AI ESR.

The ESRs compile and summarize information about the status of the Alaska marine ecosystems for the Plan Team, SSC, AP, Council, NMFS, and the public. These ESRs are updated annually and include ecosystem report cards, ecosystem assessments, and ecosystem status indicators (*i.e.,* climate indices, sea surface temperature), which together provide context for ecosystem-based fisheries management in Alaska. The ESRs inform stock assessments and are integrated in the annual harvest recommendations through inclusion in stock assessment-specific risk tables. The ESRs provide context for the SSC's recommendations for OFLs and ABCs, as well as for the Council's TAC recommendations. The SAFE reports and the ESRs are presented to the Plan Team and at the October and December Council meetings before the SSC, AP, and Council make groundfish harvest recommendations and aid NMFS in implementing these annual groundfish harvest specifications.

The SAFE report also includes information on the economic condition of the groundfish fisheries off Alaska through the Economic Status Report. The SAFE report provides information to the Council and NMFS for recommending and setting, respectively, annual harvest levels for each stock, documenting significant trends or changes in the resource, marine ecosystems, and fisheries over time, and assessing the relative success of existing Federal fishery management programs. From these data and analyses, the Plan Team recommends, and the SSC sets, an OFL and ABC for each species and species group.

The Council recommended a final 2024 BS pollock TAC that is a decrease of 2,000 mt from the proposed 2024 BS pollock TAC and is also the same as the 2023 BS pollock TAC. The Council recommended a final 2025 BS pollock TAC that is an increase of 23,000 mt from the proposed 2025 BS pollock TAC to reflect the increase in the 2025 BS pollock ABC. The Council also recommended to increase the BS Pacific cod TAC by 24,458 mt in 2024 and 9,431 mt in 2025 from the proposed TAC. In terms of tonnage, the Council reduced the TACs from the proposed TACs of several species of lower economic value to maintain an overall total TAC within the required OY range of 1.4 to 2.0 million mt with the yellowfin sole TAC accounting for most of the decrease in terms of tonnage. Some species, such as Atka mackerel and northern rockfish, are economically valuable species whose ABCs increased in 2024, which allowed the 2024 TACs to increase as well. Others, such as Alaska plaice and sharks, have increased TACs due to anticipated increased incidental catches in other fisheries. Of these species, sharks had the largest increase in terms of percentage. This is due to an increase in anticipated incidental catch in the pollock fishery. The changes to TACs between the proposed and final harvest specifications are based on the most recent scientific, biological, and socioeconomic information and are

consistent with the FMP, regulatory obligations, and harvest strategy as described in the proposed and final harvest specifications, including the required OY range of 1.4 million to 2.0 million mt. These changes are compared in table 1A.

Table 1 lists the Council's recommended final 2024 OFL, ABC, TAC, initial TAC (ITAC), CDQ reserve allocations, and non-specified reserves of the BSAI groundfish species and species groups; and table 2 lists the Council's recommended final 2025 OFL, ABC, TAC, ITAC, CDQ reserve allocations, and non-specified reserves of the BSAI groundfish species and species groups. NMFS concurs with these recommendations. These final 2024 and 2025 TAC amounts for the BSAI are within the OY range established for the BSAI and do not exceed the ABC for any species or species group. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—FINAL 2024 OFL, ABC, TAC, INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2024					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Pollock [4]	BS	3,162,000	2,313,000	1,300,000	1,170,000	130,000	
	AI	51,516	42,654	19,000	17,100	1,900	
	Bogoslof	115,146	86,360	250	250		
Pacific cod [5]	BS	200,995	167,952	147,753	131,943	15,810	
	AI	18,416	12,431	8,080	7,215	865	
Sablefish [6]	Alaska-wide	55,084	47,146	n/a	n/a	n/a	
	BS	n/a	11,450	7,996	6,597	1,099	300
	AI	n/a	13,100	8,440	6,858	1,424	158
Yellowfin sole	BSAI	305,298	265,913	195,000	174,135	20,865	
Greenland turbot	BSAI	3,705	3,188	3,188	2,710	n/a	
	BS	n/a	2,687	2,687	2,284	288	116
	AI	n/a	501	501	426		75
Arrowtooth flounder	BSAI	103,280	87,690	14,000	11,900	1,498	602
Kamchatka flounder	BSAI	8,850	7,498	7,498	6,373		1,125
Rock sole [7]	BSAI	197,828	122,091	66,000	58,938	7,062	
Flathead sole [8]	BSAI	81,605	67,289	35,500	31,702	3,799	
Alaska plaice	BSAI	42,695	35,494	21,752	18,489		3,263
Other flatfish [9]	BSAI	22,919	17,189	4,500	3,825		675
Pacific ocean perch	BSAI	49,010	41,096	37,626	33,100	n/a	
	BS	n/a	11,636	11,636	9,891		1,745
	EAI	n/a	7,969	7,969	7,116	853	
	CAI	n/a	5,521	5,521	4,930	591	
	WAI	n/a	15,970	12,500	11,163	1,338	
Northern rockfish	BSAI	23,556	19,274	16,752	14,239		2,513
Blackspotted/Rougheye rockfish [10]	BSAI	761	569	569	484		85
	BS/EAI	n/a	388	388	330		58
	CAI/WAI	n/a	181	181	154		27
Shortraker rockfish	BSAI	706	530	530	451		80
Other rockfish [11]	BSAI	1,680	1,260	1,260	1,071		189
	BS	n/a	880	880	748		132
	AI	n/a	380	380	323		57
Atka mackerel	BSAI	111,684	95,358	72,987	65,177	7,810	
	BS/EAI	n/a	41,723	32,260	28,808	3,452	
	CAI	n/a	16,754	16,754	14,961	1,793	
	WAI	n/a	36,882	23,973	21,408	2,565	
Skates	BSAI	45,574	37,808	30,519	25,941		4,578
Sharks	BSAI	689	450	400	340		60
Octopuses	BSAI	6,080	4,560	400	340		60
Total		4,609,077	3,476,800	2,000,000	1,789,177	195,199	15,623

Note: Regulatory areas and districts are defined at § 679.2.

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the BS includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to fixed gear, and Amendment 80 species (Atka mackerel, yellowfin sole, rock sole, flathead sole, Pacific cod, and AI Pacific ocean perch), 15 percent of each TAC is placed into a non-specified reserve (§ 679.20(b)(1)(i)). The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 4).

[3] For the Amendment 80 species (Atka mackerel, yellowfin sole, rock sole, flathead sole, Pacific cod, and AI Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(C)). Twenty percent of the sablefish TAC allocated to fixed gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for BS Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). AI Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, blackspotted/rougheye rockfish, shortraker rockfish, ''other rockfish,'' skates, sharks, and octopuses are not allocated to the CDQ Program.

[4] Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (50,000 mt), is further allocated by sector for a pollock directed fishery as follows: inshore—50 percent; catcher/processor—40 percent; and mothership—10 percent. Section 679.20(a)(5)(iii)(B)(1) requires the AI pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. Under § 679.20(a)(5)(iii)(B)(*2*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. The Bogoslof pollock TAC is set to accommodate incidental catch amounts.

[5] The BS Pacific cod TAC is set to account for the 12 percent, plus 45 mt, of the BS ABC for the State's guideline harvest level in State waters of the BS. The AI Pacific cod TAC is set to account for 35 percent of the AI ABC for the State guideline harvest level in State waters of the AI.

[6] The sablefish OFL and ABC is Alaska-wide and include the Gulf of Alaska. The Alaska-wide sablefish OFL and ABC are included in the total OFL and ABC. The BS and AI sablefish TACs are set to account for the 5 percent of the BS and AI ABC for the State's guideline harvest level in State waters of the BS and AI.

[7] ''Rock sole'' includes *Lepidopsetta polyxystra* (Northern rock sole).

[8] ''Flathead sole'' includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

[9] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[10] ''Blackspotted/Rougheye rockfish'' includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (rougheye).

[11] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

TABLE 1a—COMPARISON OF FINAL 2024 AND 2025 WITH PROPOSED 2024 AND 2025 TOTAL ALLOWABLE CATCH IN THE BSAI

[Amounts are in metric tons]

Species	Area [1]	2024 final TAC	2024 and 2025 proposed TAC	2024 difference from proposed	2024 percentage difference from proposed	2025 final TAC	2025 difference from proposed	2025 percentage difference from proposed
Pollock	BS	1,300,000	1,302,000	(2,000)	(0.2)	1,325,000	23,000	1.8
	AI	19,000	19,000	.....	.....	19,000	.....	.....
	Bogoslof	250	300	(50)	(16.7)	250	(50)	(16.7)
Pacific cod	BS	147,753	123,295	24,458	19.8	132,726	9,431	7.6
	AI	8,080	8,425	(345)	(4.1)	8,080	(345)	(4.1)
Sablefish	BS	7,996	9,676	(1,680)	(17.4)	9,500	(176)	(1.8)
	AI	8,440	9,793	(1,353)	(13.8)	8,440	(1,353)	(13.8)
Yellowfin sole	BSAI	195,000	230,656	(35,656)	(15.5)	195,000	(35,656)	(15.5)
Greenland turbot	BS	2,687	2,836	(149)	(5.3)	2,310	(526)	(18.5)
	AI	501	528	(27)	(5.1)	430	(98)	(18.6)
Arrowtooth flounder	BSAI	14,000	15,000	(1,000)	(6.7)	14,000	(1,000)	(6.7)
Kamchatka flounder	BSAI	7,498	7,435	63	0.8	7,360	(75)	(1.0)
Rock sole	BSAI	66,000	66,000	.....	.....	66,000	.....	.....
Flathead sole	BSAI	35,500	35,500	.....	.....	35,500	.....	.....
Alaska plaice	BSAI	21,752	18,000	3,752	20.8	20,000	2,000	11.1
Other flatfish	BSAI	4,500	4,500	.....	.....	4,500	.....	.....
Pacific ocean perch	BS	11,636	11,700	(64)	(0.5)	11,430	(270)	(2.3)
	EAI	7,969	8,013	(44)	(0.5)	7,828	(185)	(2.3)
	CAI	5,521	5,551	(30)	(0.5)	5,423	(128)	(2.3)
	WAI	12,500	13,000	(500)	(3.8)	12,500	(500)	(3.8)
Northern rockfish	BSAI	16,752	11,000	5,752	52.3	15,000	4,000	36.4
Blackspotted and Rougheye rockfish	BS/EAI	388	388	.....	.....	412	24	6.2
	CAI/WAI	181	182	(1)	(0.5)	195	13	7.1
Shortraker rockfish	BSAI	530	530	.....	.....	530	.....	.....
Other rockfish	BS	880	880	.....	.....	880	.....	.....
	AI	380	380	.....	.....	380	.....	.....
Atka mackerel	EAI/BS	32,260	30,000	2,260	7.5	30,000	.....	.....
	CAI	16,754	15,218	1,536	10.1	14,877	(341)	(2.2)
	WAI	23,973	21,637	2,336	10.8	21,288	(349)	(1.6)
Skates	BSAI	30,519	27,927	2,592	9.3	30,361	2,434	8.7
Sharks	BSAI	400	250	150	60.0	400	150	60.0
Octopuses	BSAI	400	400	.....	.....	400	.....	.....
Total	BSAI	2,000,000	2,000,000	.....	.....	2,000,000	.....	.....

TABLE 2—FINAL 2025 OFL, ABC, TAC, ITAC, CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2025					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Pollock [4]	BS	3,449,000	2,401,000	1,325,000	1,192,500	132,500	.....
	AI	53,030	43,863	19,000	17,100	1,900	.....
	Bogoslof	115,146	86,360	250	250	.....	.....
Pacific cod [5]	BS	180,798	150,876	132,726	118,524	14,202	.....
	AI	18,416	12,431	8,080	7,215	865	.....
Sablefish [6]	Alaska-wide	55,317	47,350	n/a	n/a	n/a	.....
	BS	n/a	11,499	9,500	4,038	356	356
	AI	n/a	13,156	8,440	1,794	158	158
Yellowfin sole	BSAI	317,932	276,917	195,000	174,135	20,865	.....
Greenland turbot	BSAI	3,185	2,740	2,740	2,329	n/a	.....
	BS	n/a	2,310	2,310	1,964	247	99
	AI	n/a	430	430	366	.....	65
Arrowtooth flounder	BSAI	104,270	88,548	14,000	11,900	1,498	602
Kamchatka flounder	BSAI	8,687	7,360	7,360	6,256	.....	1,104
Rock sole [7]	BSAI	264,789	122,535	66,000	58,938	7,062	.....
Flathead sole [8]	BSAI	82,699	68,203	35,500	31,702	3,799	.....
Alaska plaice	BSAI	45,182	37,560	20,000	17,000	.....	3,000
Other flatfish [9]	BSAI	22,919	17,189	4,500	3,825	.....	675
Pacific ocean perch	BSAI	48,139	40,366	37,181	32,711	n/a	.....
	BS	n/a	11,430	11,430	9,716	.....	1,715
	EAI	n/a	7,828	7,828	6,990	838	.....
	CAI	n/a	5,423	5,423	4,843	580	.....
	WAI	n/a	15,685	12,500	11,163	1,338	.....
Northern rockfish	BSAI	22,838	18,685	15,000	12,750	.....	2,250
Blackspotted/Rougheye rockfish [10]	BSAI	813	607	607	516	.....	91
	BS/EAI	n/a	412	412	350	.....	62
	CAI/WAI	n/a	195	195	166	.....	29

TABLE 2—FINAL 2025 OFL, ABC, TAC, ITAC, CDQ RESERVE ALLOCATION, AND NONSPECIFIED RESERVES OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in metric tons]

Species	Area	2025					
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	Nonspecified reserves
Shortraker rockfish	BSAI	706	530	530	451		80
Other rockfish [11]	BSAI	1,680	1,260	1,260	1,071		189
	BS	n/a	880	880	748		132
	AI	n/a	380	380	323		57
Atka mackerel	BSAI	99,723	84,676	66,165	59,085	7,080	
	EAI/BS	n/a	37,049	30,000	26,790	3,210	
	CAI	n/a	14,877	14,877	13,285	1,592	
	WAI	n/a	32,750	21,288	19,010	2,278	
Skates	BSAI	44,203	36,625	30,361	25,807		4,554
Sharks	BSAI	689	450	400	340		60
Octopuses	BSAI	6,080	4,560	400	340		60
Total		4,946,241	3,550,691	2,000,000	1,780,576	193,286	15,058

Note: Regulatory areas and districts are defined at § 679.2.

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the BS includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to fixed gear, and Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 15 percent of each TAC is put into a non-specified reserve (§ 679.20(b)(1)(i)). The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 4).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(C)). Twenty percent of the sablefish TAC allocated to fixed gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). The 2025 fixed gear portion of the sablefish ITAC and CDQ reserve will not be specified until the final 2025 and 2026 harvest specifications. Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted/rougheye rockfish, ''other rockfish,'' skates, sharks, and octopuses are not allocated to the CDQ program.

[4] Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (50,000 mt), is further allocated by sector for a pollock directed fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Section 679.20(a)(5)(iii)(B)(1) requires the AI pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. Under § 679.20(a)(5)(iii)(B)(*2*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. The Bogoslof pollock TAC is set to accommodate incidental catch amounts.

[5] The BS Pacific cod TAC is set to account for the 12 percent, plus 45 mt, of the BS ABC for the State's guideline harvest level in State waters of the BS. The AI Pacific cod TAC is set to account for 35 percent of the AI ABC for the State guideline harvest level in State waters of the AI.

[6] The sablefish OFL and ABC are Alaska-wide and include the Gulf of Alaska. The Alaska-wide sablefish OFL and ABC are included in the total OFL and ABC. The BS and AI sablefish TACs are set to account for the 5 percent of the BS and AI ABC for the State's guideline harvest level in State waters.

[7] ''Rock sole'' includes *Lepidopsetta polyxystra* (Northern rock sole).

[8] ''Flathead sole'' includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).

[9] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[10] ''Blackspotted/Rougheye rockfish'' includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianu*s (rougheye).

[11] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

Groundfish Reserves and the ICA for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch

Section 679.20(b)(1)(i) requires that NMFS reserve 15 percent of the TAC for each target species (except for pollock, fixed gear allocation of sablefish, and Amendment 80 species) in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that NMFS allocate 20 percent of the fixed gear allocation of sablefish to the fixed-gear sablefish CDQ reserve for each subarea. Section 679.20(b)(1)(ii)(D) requires that NMFS allocate 7.5 percent of the trawl gear allocations of sablefish in the BS and AI and 10.7 percent of the BS Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that NMFS allocate 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod (the Amendment 80 species) to the respective CDQ reserves.

Section 679.20(b)(1)(ii)(A) also requires that 10 percent of the BS pollock TAC be allocated to the pollock CDQ directed fishing allowance (DFA). Section 679.20(b)(1)(ii)(A) requires that 10 percent of the AI pollock TAC be allocated to the pollock CDQ DFA. The entire Bogoslof District pollock TAC is allocated as an ICA pursuant to § 679.20(a)(5)(ii) because the Bogoslof District is closed to directed fishing for pollock by regulation (§ 679.22(a)(7)(B)). With the exception of the fixed gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 50,000 mt of the BS pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2000–2023. During this 24-year period, the pollock incidental catch ranged from a low of 2.2 percent in 2006 to a high of 4.6 percent in 2014, with a 24-year average of 3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*), NMFS establishes a pollock ICA of 3,420 mt of the AI pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003–2023. During this 21-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 17 percent in 2014, with a 21-year average of 9 percent.

After subtracting the 10.7 percent CDQ reserve and pursuant to § 679.20(a)(8) and (10), NMFS allocates ICAs of 3,000 mt of flathead sole, 6,000 mt of rock sole, 4,000 mt of yellowfin sole, 10 mt of Western Aleutian district (WAI) Pacific ocean perch, 60 mt of Central Aleutian district (CAI) Pacific ocean perch, 100 mt of Eastern Aleutian

district (EAI) Pacific ocean perch, 20 mt of WAI Atka mackerel, 75 mt of CAI Atka mackerel, and 800 mt of EAI and BS Atka mackerel. These ICA allowances are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2023.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserves during the year, provided that such apportionments are consistent with § 679.20(a)(3) and do not result in overfishing (see § 679.20(b)(1)(i)). The Regional Administrator has determined that the ITACs specified for two species group listed in tables 1 and 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b), NMFS is apportioning the amounts shown in table 3 from the non-specified reserve to increase the ITAC for AI ''other rockfish'' and blackspotted/rougheye rockfish in the Central Aleutian district and Western Aleutian district (CAI/WAI) by 15 percent of their TACs in 2024 and 2025.

TABLE 3—FINAL 2024 AND 2025 APPORTIONMENT OF NON-SPECIFIED RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species-area or subarea	2024 ITAC	2024 reserve amount	2024 final TAC	2025 ITAC	2025 reserve amount	2025 final TAC
Other rockfish-Aleutian Islands subarea	323	57	380	323	57	380
Blackspotted/Rougheye rockfish—CAI/WAI	154	27	181	166	29	195
Total	477	84	561	489	86	575

Allocation of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the BS pollock TAC be apportioned as a DFA, after subtracting 10 percent for the CDQ program and 50,000 mt for the ICA in both 2024 and 2025, as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (CP) sector, and 10 percent to the mothership sector. In the BS, 45 percent of the DFAs are allocated to the A season (January 20–June 10), and 55 percent of the DFAs are allocated to the B season (June 10–November 1) (§§ 679.20(a)(5)(i)(B)(*1*) and 679.23(e)(2)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock TAC remaining in the AI after subtracting 1,900 mt for the CDQ DFA (10 percent) and 3,420 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)). In the AI, the total A season apportionment of the TAC (including the AI directed fishery allocation, the CDQ DFA, and the ICA) may not exceed 40 percent of the ABC for AI pollock, and the remainder of the TAC is allocated to the B season (§ 679.20(a)(5)(iii)(B)(*3*)). Tables 4 and 5 list these 2024 and 2025 amounts.

Section 679.20(a)(5)(iii)(B)(*6*) sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541. In accordance with this regulation, NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding BS pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the CP sector be available for harvest by AFA CVs with CP sector endorsements, unless the Regional Administrator receives a cooperative contract that allows for the distribution of harvest among AFA CPs and AFA CVs in a manner agreed to by all members. Second, AFA CPs not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the CP sector. Tables 4 and 5 list the 2024 and 2025 allocations of pollock TAC. Table 6 lists the 2024 inshore sector allocation among AFA inshore cooperatives and AFA open access vessels. The 2025 AFA CV cooperative membership will not be known until eligible participants apply for participation in the program by December 1, 2024. Table 22 lists the CDQ allocation of pollock among the CDQ groups. Tables 24, 25, and 26 list the AFA CP and CV harvesting sideboard limits.

Tables 4, 5, and 6 also list seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the annual pollock DFA before 12 p.m. A.l.t. (noon), April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit is apportioned to each sector in proportion to each sector's allocated percentage of the DFA.

TABLE 4—FINAL 2024 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2024 Allocations	2024 A season [1]		2024 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,300,000	n/a	n/a	n/a
CDQ DFA	130,000	58,500	36,400	71,500
ICA [1]	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,120,000	504,000	313,600	616,000
AFA Inshore	560,000	252,000	156,800	308,000
AFA Catcher/Processors [3]	448,000	201,600	125,440	246,400
Catch by CPs	409,920	184,464	n/a	225,456

TABLE 4—FINAL 2024 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2024 Allocations	2024 A season [1]		2024 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Catch by CVs [3]	38,080	17,136	n/a	20,944
Unlisted CP Limit [4]	2,240	1,008	n/a	1,232
AFA Motherships	112,000	50,400	31,360	61,600
Excessive Harvesting Limit [5]	196,000	n/a	n/a	n/a
Excessive Processing Limit [6]	336,000	n/a	n/a	n/a
Aleutian Islands subarea ABC	42,654	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,872	n/a	28
ICA	3,420	1,710	n/a	1,710
Aleut Corporation	13,680	13,479	n/a	201
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	12,796	n/a	n/a	n/a
542	6,398	n/a	n/a	n/a
543	2,133	n/a	n/a	n/a
Bogoslof District ICA [8]	250	n/a	n/a	n/a

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt, ~3.85 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the BS subarea, 45 percent of the DFA and CDQ DFA are allocated to the A season (January 20–June 10) and 55 percent of the DFA and CDQ DFA are allocated to the B season (June 10–November 1). When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(1)). Pursuant to § 679.20(a)(5)(iii)(B)(2), the AI subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated no more than 40 percent of the AI pollock ABC.

[2] In the BS subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12:00 p.m. A.l.t., April 1. The SCA is defined at § 679.22(a)(7)(vii).

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the allocation to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative contract for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted CPs are limited to harvesting not more than 0.5 percent of the CP sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the AI pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

TABLE 5—FINAL 2025 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2025 Allocations	2025 A season [1]		2025 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,325,000	n/a	n/a	n/a
CDQ DFA	132,500	59,625	37,100	72,875
ICA [1]	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,142,500	514,125	319,900	628,375
AFA Inshore	571,250	257,063	159,950	314,188
AFA Catcher/Processors [3]	457,000	205,650	127,960	251,350
Catch by CPs	418,155	188,170	n/a	229,985
Catch by CVs [3]	38,845	17,480	n/a	21,365
Unlisted CP Limit [4]	2,285	1,028	n/a	1,257
AFA Motherships	114,250	51,413	31,990	62,838
Excessive Harvesting Limit [5]	199,938	n/a	n/a	n/a
Excessive Processing Limit [6]	342,750	n/a	n/a	n/a
Aleutian Islands subarea ABC	43,863	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,900	n/a	.....
ICA	3,420	1,710	n/a	1,710
Aleut Corporation	13,680	13,680	n/a	.....
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	13,159	n/a	n/a	n/a
542	6,579	n/a	n/a	n/a
543	2,193	n/a	n/a	n/a

TABLE 5—FINAL 2025 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2025 Allocations	2025 A season [1]		2025 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bogoslof District ICA [8]	250	n/a	n/a	n/a

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt, ~3.85 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the BS subarea, 45 percent of the DFA and CDQ DFA are allocated to the A season (January 20–June 10) and 55 percent of the DFA and CDQ DFA are allocated to the B season (June 10–November 1). When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(1)). Pursuant to § 679.20(a)(5)(iii)(B)(2), the AI subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated no more than 40 percent of the AI pollock ABC.

[2] In the BS subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12:00 p.m. A.l.t., April 1. The SCA is defined at § 679.22(a)(7)(vii).

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the allocation to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative contract for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted CPs are limited to harvesting not more than 0.5 percent of the CP sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the AI pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

TABLE 6—FINAL 2024 AFA INSHORE COOPERATIVE AND OPEN ACCESS POLLOCK ALLOCATIONS, AND INSHORE SECTOR STELLER SEA LION CONSERVATION AREA LIMITS

Cooperative name [1]	Percent of inshore sector allocation	Sum of vessel's catch histories (mt) [2]	2024 Allocations (mt)
AFA Open Access	2.103	18,414	11,777
Akutan Catcher Vessel Association	33.788	295,836	189,212
Northern Victor Fleet Cooperative	9.346	81,828	52,336
Unalaska Fleet Cooperative (Alyeska)	12.261	107,357	68,663
UniSea Fleet Cooperative	23.122	202,454	129,486
Westward Fleet Cooperative	19.380	169,683	108,526
Sum of all Cooperatives	100.000	875,572	560,000

Inshore Sector Steller Sea Lion Conservation Area (SCA) Limits

	2024 A season TAC	2024 A season SCA harvest limit [3]	2024 B season TAC
Inshore cooperative sector:			
Vessels >99 ft	n/a	134,934	n/a
Vessels ≤99 ft	n/a	21,866	n/a
Total	252,000	156,800	308,000
Open access sector	.....	.....	.....
Total inshore sector	252,000	156,800	308,000

Note: Totals may not add up due to rounding.

[1] The 2025 AFA catcher vessel cooperative membership will not be known until eligible participants apply for participation in the program by December 1, 2024.

[2] According to regulations at § 679.62(a)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors and motherships for vessels that made 500 or more mt of landings to catcher/processors and motherships from 1995 through 1997.

[3] The Steller sea lion conservation area (SCA) is established at § 679.22(a)(7)(vii). The SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(2), and the Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, ICAs for the BSAI trawl limited access sector and non-trawl gear sector, and the jig gear allocation (tables 7 and 8). The percentage of the ITAC for Atka mackerel allocated to the Amendment 80 and BSAI trawl limited access sectors is listed in table 33 to 50 CFR part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the EAI and the BS Atka mackerel TAC may be allocated to vessels using jig gear. The percent of this allocation is recommended annually by the Council based on several criteria, including, among other criteria, the anticipated harvest capacity of the jig gear fleet. After reviewing Council recommendations, NMFS approves a 0.5 percent allocation of the Atka mackerel TAC in the EAI and BS to the jig gear sector in 2024 and 2025.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC, after subtraction of the jig gear allocation, into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through December 31 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to CDQ Atka mackerel trawl fishing. Within any fishing year, any under harvest or over harvest of a seasonal allowance may be added to or subtracted from a subsequent seasonal allowance (§ 679.20(a)(8)(ii)(B)). The ICAs and jig gear allocations are not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(*1*)(*i*) and (*ii*) limits Atka mackerel catch within waters 0 nautical miles (nmi) to 20 nmi of Steller sea lion sites listed in table 6 to 50 CFR part 679 and located west of 178° W longitude to no more than 60 percent of the annual TACs in Areas 542 and 543. The annual harvest is also equally divided between the A and B seasons as defined at § 679.23(e)(3). Section 679.20(a)(8)(ii)(C)(*2*) requires that the annual TAC in Area 543 will be no more than 65 percent of the ABC in Area 543. Section 679.20(a)(8)(ii)(D) requires that any unharvested Atka mackerel A season allowance that is added to the B season be prohibited from being harvested within waters 0 nmi to 20 nmi of Steller sea lion sites listed in table 6 to 50 CFR part 679 and located in Areas 541, 542, and 543.

Tables 7 and 8 list these 2024 and 2025 Atka mackerel seasonal and area allowances, and the sector allocations. One Amendment 80 cooperative has formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. Table 22 lists the allocation of CDQ Atka mackerel among the CDQ groups.

TABLE 7—FINAL 2024 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2024 Allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	32,260	16,754	23,973
CDQ reserve	Total	3,452	1,793	2,565
	A	1,726	896	1,283
	Critical Habitat	n/a	538	770
	B	1,726	896	1,283
	Critical Habitat	n/a	538	770
Non-CDQ TAC	n/a	28,808	14,961	21,408
ICA	Total	800	75	20
Jig [6]	Total	140	.....	.....
BSAI trawl limited access	Total	2,787	1,489	.....
	A	1,393	744	.....
	Critical Habitat	n/a	447	.....
	B	1,393	744	.....
	Critical Habitat	n/a	447	.....
Amendment 80 sector	Total	25,081	13,398	21,388
	A	12,541	6,699	10,694
	Critical Habitat	n/a	4,019	6,416
	B	12,541	6,699	10,694
	Critical Habitat	n/a	4,019	6,416

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see § 679.20(b)(1)(ii)(C)).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel for the CDQ reserve, BSAI trawl limited access sector, and Amendment 80 sector are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion protection areas; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual harvest limits between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian Islands District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2024 at 0.5 percent. The jig gear allocation is not apportioned by season.

TABLE 8—FINAL 2025 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2025 Allocation by area		
		Eastern Aleutian District/ Bering Sea [5]	Central Aleutian District [5]	Western Aleutian District [5]
TAC	n/a	30,000	14,877	21,288
CDQ reserve	Total	3,210	1,592	2,278
	A	1,605	796	1,139
	Critical Habitat	n/a	478	683
	B	1,605	796	1,139
	Critical Habitat	n/a	478	683
non-CDQ TAC	n/a	26,790	13,285	19,010
ICA	Total	800	75	20
Jig [6]	Total	130	.....	.....
BSAI trawl limited access	Total	2,586	1,321	.....
	A	1,293	661	.....
	Critical Habitat	n/a	396	.....
	B	1,293	661	.....
	Critical Habitat	n/a	396	.....
Amendment 80 sectors [7]	Total	23,274	11,889	18,990
	A	11,637	5,945	9,495
	Critical Habitat	n/a	3,567	5,697
	B	11,637	5,945	9,495
	Critical Habitat	n/a	3,567	5,697

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see § 679.20(b)(1)(ii)(C)).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel for the CDQ reserve, BSAI trawl limited access sector, and Amendment 80 sector are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion protection areas; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual harvest limits between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian Islands District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2025 at 0.5 percent. The jig gear allocation is not apportioned by season.

[7] The 2025 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

Allocation of the Pacific Cod TAC

The Council separated the BSAI OFL, ABC, and TAC into BS and AI subarea OFLs, ABCs, and TACs for Pacific cod in 2014 (79 FR 12108, March 4, 2014). Section 679.20(b)(1)(ii)(C) allocates 10.7 percent of the BS TAC and the AI TAC to the CDQ program. After CDQ allocations have been deducted from the respective BS and AI Pacific cod TACs, the remaining BSAI Pacific cod TACs are combined for calculating further BSAI Pacific cod sector allocations and seasonal allowances. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will prohibit non-CDQ directed fishing for Pacific cod in that subarea as provided in § 679.20(d)(1)(iii).

Section 679.20(a)(7)(ii) allocates to the non-CDQ sectors the Pacific cod TAC in the combined BSAI, after subtracting 10.7 percent for the CDQ program, as follows: 1.4 percent to vessels using jig gear; 2.0 percent to hook-and-line or pot CVs less than 60 ft (18.3 m) length overall (LOA); 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA; 48.7 percent to hook-and-line CPs; 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA; 1.5 percent to pot CPs; 2.3 percent to AFA trawl CPs; 13.4 percent to Amendment 80 sector; and 22.1 percent to trawl CVs. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2024 and 2025, the Regional Administrator establishes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries. During the fishing year, NMFS may reallocate unharvested Pacific cod among sectors, consistent with the reallocation hierarchy set forth at § 679.20(a)(7)(iii).

The ITAC allocation of Pacific cod to the Amendment 80 sector is established in table 33 to 50 CFR part 679 and § 679.91. One Amendment 80 cooperative has formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

The BSAI ITAC allocation of Pacific cod to the PCTC Program is established in § 679.131(b). Section 679.131(b)(1)(i) also requires NMFS to establish an ICA for incidental catch of Pacific cod by trawl CVs engaged in directed fishing for groundfish other than PCTC Program Pacific cod. In the annual harvest specification process, NMFS determines the Pacific cod trawl catcher vessel TAC and the annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA (§ 679.131(b)(2)) (table 9 below). The 2025 allocations for PCTC Program cooperatives will not be known until NMFS receives the membership applications by November 1, 2024. The 2024 PCTC cooperative allocations and PSC allowances are listed in table 11.

The sector allocations of Pacific cod are apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7)(i)(B) (CDQ), 679.20(a)(7)(iv)(A) (non-CDQ), and 679.23(e)(5) (seasons)). Tables 9 and 10 list the non-CDQ sector and seasonal allowances. In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a non-CDQ Pacific cod seasonal allowance for any sector, except the jig sector, will become available at the beginning of that sector's next seasonal allowance. Section 679.20(a)(7)(i)(B) sets forth the CDQ Pacific cod gear allowances by season, and CDQ groups are prohibited from exceeding those seasonal allowances (§ 679.7(d)(6)).

Section 679.20(a)(7)(vii) requires that the Regional Administrator establish an Area 543 Pacific cod harvest limit based on Pacific cod abundance in Area 543 as determined by the annual stock assessment process. Based on the 2023 stock assessment, the Regional Administrator determined for 2024 and 2025 the estimated amount of Pacific cod abundance in Area 543 is 15.7 percent of the total AI abundance. To calculate the Area 543 Pacific cod harvest limit, NMFS first subtracts the State GHL Pacific cod amount from the AI Pacific cod ABC. Then NMFS determines the harvest limit in Area 543 by multiplying the percentage of Pacific cod estimated in Area 543 (15.7 percent) by the remaining ABC for AI Pacific cod. Based on these calculations, the Area 543 harvest limit is 1,269 mt for 2024 and 2025.

Under the PCTC Program, PCTC Program cooperatives are required to collectively set aside up to twelve percent of the trawl CV A-season allocation for delivery to an AI shoreplant in years in which an AI community representative notifies NMFS of the intent to process PCTC Program Pacific cod in the City of Adak or City of Atka (§ 679.132). A notice of intent to process PCTC Program Pacific cod must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15. A notice of intent was not received in 2023, and accordingly the AI set-aside will not be in effect for 2024. The 2025 set-aside will be determined after the October 15, 2024 deadline in conjunction with the 2025 and 2026 harvest specifications process.

Based on the final 2024 and 2025 Pacific cod TACs, table 9 and table 10 list the CDQ and non-CDQ TAC amounts; non-CDQ seasonal allowances by gear; the sector allocations of Pacific cod; and the seasons set forth at § 679.23(e)(5). The CDQ allocation by CDQ groups is listed in table 22.

TABLE 9—FINAL 2024 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2024 Share of gear sector total	2024 Share of sector total	2024 Seasonal allowances	
				Season	Amount
Total Bering Sea TAC	n/a	147,753	n/a	n/a	n/a
Bering Sea CDQ	n/a	15,810	n/a	See § 679.20(a)(7)(i)(B)	n/a
Bering Sea non-CDQ TAC	n/a	131,943	n/a	n/a	n/a
Total Aleutian Islands TAC	n/a	8,080	n/a	n/a	n/a
Aleutian Islands CDQ	n/a	865	n/a	See § 679.20(a)(7)(i)(B)	n/a
Aleutian Islands non-CDQ TAC	n/a	7,215	n/a	n/a	n/a
Western Aleutians Islands Limit	n/a	1,269	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100.0	139,159	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	84,609	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	84,109	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	67,370	n/a	n/a
A-season				Jan 1–Jun 10	34,359
B-season				Jun 10–Dec 31	33,011
Hook-and-line catcher vessels ≥60 ft LOA	0.2	n/a	277	n/a	n/a
A-season				Jan 1–Jun 10	141
B-season				Jun 10–Dec 31	136
Pot catcher/processors	1.5	n/a	2,075	n/a	n/a
Pot catcher/processors A-season				Jan 1–Jun 10	1,058
Pot catcher/processors B-season				Sept 1–Dec 31	1,017
Pot catcher vessels ≥60 ft LOA	8.4	n/a	11,620	n/a	n/a
A-season				Jan 1–Jun 10	5,926
B-season				Sept 1–Dec 31	5,694
Catcher vessels <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,767	n/a	n/a
Trawl catcher vessels [3]	22.1	30,754	n/a	n/a	n/a
A-season ICA				Jan 20–Apr 1	1,500
A-season PCTC				Jan 20–Apr 1	21,258
B-season ICA				Apr 1–Jun 10	700
B-season PCTC				Apr 1–Jun 10	2,683
C-season trawl catcher vessels				Jun 10–Nov 1	4,613
AFA trawl catcher/processors	2.3	3,201	n/a	n/a	n/a
A-season				Jan 20–Apr 1	2,400
B-season				Apr 1–Jun 10	800

TABLE 9—FINAL 2024 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Sector	Percent	2024 Share of gear sector total	2024 Share of sector total	2024 Seasonal allowances	
				Season	Amount
C-season				Jun 10–Nov 1	
Amendment 80	13.4	18,647	n/a	n/a	n/a
A-season				Jan 20–Apr 1	13,985
B-season				Apr 1–Jun 10	4,662
C-season				Jun 10–Dec 31	
Jig	1.4	1,948	n/a	n/a	n/a
A-season				Jan 1–Apr 30	1,169
B-season				Apr 30–Aug 31	390
C-season				Aug 31–Dec 31	390

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the BS or AI is or will be reached, then directed fishing will be prohibited for non-CDQ Pacific cod in that subarea, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors is deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries.

[3] The A and B season trawl CV Pacific cod allocation is allocated to the Pacific Cod Trawl Cooperative Program after subtraction of the A and B season ICAs (§ 679.131(b)(1)). The Regional Administrator approves for the A and B seasons, ICAs of 1,500 mt and 700 mt, respectively, to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

TABLE 10—FINAL 2025 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2025 Share of gear sector total	2025 Share of sector total	2025 Seasonal allowances	
				Season	Amount
Total Bering Sea TAC	n/a	132,726	n/a	n/a	n/a
Bering Sea CDQ	n/a	14,202	n/a	See § 679.20(a)(7)(i)(B)	n/a
Bering Sea non-CDQ TAC	n/a	118,524	n/a	n/a	n/a
Total Aleutian Islands TAC	n/a	8,080	n/a	n/a	n/a
Aleutian Islands CDQ	n/a	865	n/a	See § 679.20(a)(7)(i)(B)	n/a
Aleutian Islands non-CDQ TAC	n/a	7,215	n/a	n/a	n/a
Western Aleutians Islands Limit	n/a	1,269	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100.0	125,740	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	76,450	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	75,950	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	60,835	n/a	n/a
A-season				Jan 1–Jun 10	31,026
B-season				Jun 10–Dec 31	29,809
Hook-and-line catcher vessels ≥60 ft LOA	0.2	n/a	250	n/a	n/a
A-season				Jan 1–Jun 10	127
B-season				Jun 10–Dec 31	122
Pot catcher/processors	1.5	n/a	1,874	n/a	n/a
Pot catcher/processors A-season				Jan 1–Jun 10	956
Pot catcher/processors B-season				Sept 1–Dec 31	918
Pot catcher vessels ≥60 ft LOA	8.4	n/a	10,493	n/a	n/a
A-season				Jan 1–Jun 10	5,351
B-season				Sept 1–Dec 31	5,142
Catcher vessels <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,498	n/a	n/a
Trawl catcher vessels [3]	22.1	27,788	n/a	n/a	n/a
A-season ICA				Jan 20–Apr 1	1,500
A-season PCTC				Jan 20–Apr 1	19,063
B-season ICA				Apr 1–Jun 10	700
B-season PCTC				Apr 1–Jun 10	2,357
C-season trawl catcher vessels				Jun 10–Nov 1	4,168
AFA trawl catcher/processors	2.3	2,892	n/a	n/a	n/a
A-season				Jan 20–Apr 1	2,169
B-season				Apr 1–Jun 10	723
C-season				Jun 10–Nov 1	
Amendment 80	13.4	16,849	n/a	n/a	n/a
A-season				Jan 20–Apr 1	12,637
B-season				Apr 1–Jun 10	4,212
C-season				Jun 10–Dec 31	
Jig	1.4	1,760	n/a	n/a	n/a
A-season				Jan 1–Apr 30	1,056
B-season				Apr 30–Aug 31	352

TABLE 10—FINAL 2025 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Sector	Percent	2025 Share of gear sector total	2025 Share of sector total	2025 Seasonal allowances	
				Season	Amount
C-season				Aug 31–Dec 31	352

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the BS or AI is or will be reached, then directed fishing will be prohibited for non-CDQ Pacific cod in that subarea, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors is deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries.

[3] The A and B season trawl CV Pacific cod allocation is allocated to the Pacific Cod Trawl Cooperative Program after subtraction of the A and B season ICAs (§ 679.131(b)(1)). The Regional Administrator approves for the A and B seasons, ICAs of 1,500 mt and 700 mt, respectively, to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 11—FINAL 2024 PCTC COOPERATIVE ALLOCATIONS AND PSC ALLOWANCES

[Pacific cod and Pacific halibut amounts are in metric tons. Crab are in number of animals.]

Cooperative name [1]	Total Pacific cod CQ	A Season Pacific cod CQ	B Season Pacific cod CQ	Halibut	Red king crab	C. opilio COBLZ	Zone 1 c. bairdi	Zone 2 c. bairdi
GA Catcher Vessels Association	894	794	100	9.599	61	1,050	1,253	1,044
Akutan Cod Association	14,256	12,658	1,598	8.703	55	952	1,136	947
Usixty PCTC Association	811	720	91	9.475	60	1,037	1,237	1,031
Katie Ann Cod Cooperative	883	784	99	50.54	325	5,531	6,601	5,501
USS Cod Cooperative	2,389	2,122	268	153.03	984	16,750	19,987	16,656
Unified Cod Cooperative	4,708	4,180	528	25.649	164	2,807	3,350	2,791
Totals	23,942	21,258	2,684	257	1,653	28,130	33,567	27,973

Note: Totals may not add up due to rounding.

[1] The 2025 allocations for PCTC Cooperatives will not be known until eligible participants apply for participation in the program by November 1, 2024.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require allocation of the sablefish TAC for the BS and AI subareas between the trawl gear and fixed gear sectors. Gear allocations of the sablefish TAC for the BS are 50 percent for trawl gear and 50 percent for fixed gear. Gear allocations of the TAC for the AI are 25 percent for trawl gear and 75 percent for fixed gear. Section 679.20(b)(1)(ii)(B) requires that NMFS apportion 20 percent of the fixed gear allocation of sablefish TAC to the CDQ reserve for each subarea. Also, § 679.20(b)(1)(ii)(D)(*1*) requires that in the BS and AI 7.5 percent of the trawl gear allocation of sablefish TAC from the non-specified reserve, established under § 679.20(b)(1)(i), be assigned to the CDQ reserve.

The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the fixed gear sablefish Individual Fishing Quota (IFQ) fisheries are limited to the 2024 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 12 lists the 2024 and 2025 gear allocations of the sablefish TAC and CDQ reserve amounts. Allocations among CDQ groups are listed in table 22.

TABLE 12—FINAL 2024 AND 2025 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2024 Share of TAC	2024 ITAC	2024 CDQ reserve	2025 Share of TAC	2025 ITAC	2025 CDQ reserve
Bering Sea:							
Trawl gear [1]	50	3,998	3,398	300	4,750	4,038	356
Fixed gear [2]	50	3,998	3,198	800	n/a	n/a	n/a
Total	100	7,996	6,597	1,099	4,750	4,038	356
Aleutian Islands:							
Trawl gear [1]	25	2,110	1,794	158	2,110	1,794	158
Fixed gear [2]	75	6,330	5,064	1,266	n/a	n/a	n/a
Total	100	8,440	6,858	1,424	2,110	1,794	158

Note: Seasonal or sector apportionments may not total precisely due to rounding.

[1] For the sablefish TAC allocated to vessels using trawl gear, 15 percent of TAC is apportioned to the non-specified reserve (§ 679.20(b)(1)(i)). The ITAC for vessels using trawl gear is the remainder of the TAC after subtracting this reserve. In the BS and AI, 7.5 percent of the trawl gear allocation of the TAC is assigned from the non-specified reserve to the CDQ reserve (§ 679.20(b)(1)(ii)(D)(1)).

[2] For the portion of the sablefish TAC allocated to vessels using fixed gear, 20 percent of the allocated TAC for the BS and AI is reserved for use by CDQ participants (§ 679.20(b)(1)(ii)(B)). The ITAC for vessels using fixed gear is the remainder of the TAC after subtracting the CDQ reserve for each subarea. The Council recommended, and NMFS concurs, that specifications for the fixed gear sablefish IFQ fisheries be limited to one year.

Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch and BSAI flathead sole, rock sole, and yellowfin sole ITACs between the Amendment 80 sector and the BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserves and ICAs for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocations of the ITACs for AI Pacific ocean perch and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector are established in accordance with tables 33 and 34 to 50 CFR part 679 and with § 679.91.

One Amendment 80 cooperative has formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole Amendment 80 cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. Tables 13 and 14 list the 2024 and 2025 allocations of the AI Pacific ocean perch and BSAI flathead sole, rock sole, and yellowfin sole TACs. Allocations among the CDQ groups are listed in table 22.

TABLE 13—FINAL 2024 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian district	Central Aleutian district	Western Aleutian district	BSAI	BSAI	BSAI
TAC	7,969	5,521	12,500	35,500	66,000	195,000
CDQ	853	591	1,338	3,799	7,062	20,865
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	702	487	223	.....	.....	32,996
Amendment 80	6,315	4,383	10,929	28,702	52,938	137,139

Note: Sector apportionments may not total precisely due to rounding.

TABLE 14—FINAL 2025 COMMUNITY DEVELOPMENT QUOTA (CDC) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian district	Central Aleutian district	Western Aleutian district	BSAI	BSAI	BSAI
TAC	7,828	5,423	12,500	35,500	66,000	195,000
CDQ	838	580	1,338	3,799	7,062	20,865
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	689	478	223	.....	.....	32,996
Amendment 80 [1]	6,201	4,304	10,929	28,702	52,938	137,139

Note: Sector apportionments may not total precisely due to rounding.

[1] The 2025 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

Section 679.2 defines the ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between the annual ABC and TAC for each species. Section 679.20(b)(1)(iii) establishes ABC reserves for flathead sole, rock sole, and yellowfin sole. The ABC surpluses and the ABC reserves are necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and the Amendment 80 cooperatives from fully harvesting their allocations and to improve the likelihood of achieving and maintaining, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. NMFS, after consultation with the Council, may set the ABC reserve at or below the ABC surplus for each species, thus maintaining the TAC at or below ABC limits. An amount equal to 10.7 percent of the ABC reserves will be allocated as CDQ ABC reserves for flathead sole, rock sole, and yellowfin sole. Section 679.31(b)(4) establishes the annual allocations of CDQ ABC reserves among the CDQ groups. The Amendment 80 ABC reserves are the ABC reserves minus the CDQ ABC reserves. Section 679.91(i)(2) establishes Amendment 80 cooperatives ABC reserve to be the ratio of each cooperatives' quota share units and the total Amendment 80 quota share units, multiplied by the Amendment 80 ABC

reserve for each respective species. Table 15 lists the 2024 and 2025 ABC surplus and ABC reserves for BSAI flathead sole, rock sole, and yellowfin sole. The ABC reserves for the CDQ groups are listed in table 22.

TABLE 15—FINAL 2024 AND 2025 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2024 Flathead sole	2024 Rock sole	2024 Yellowfin sole	2025 [1] Flathead sole	2025 [1] Rock sole	2025 [1] Yellowfin sole
ABC	67,289	122,091	265,913	68,203	122,535	276,917
TAC	35,500	66,000	195,000	35,500	66,000	195,000
ABC surplus	31,789	56,091	70,913	32,703	56,535	81,917
ABC reserve	31,789	56,091	70,913	32,703	56,535	81,917
CDQ ABC reserve	3,401	6,002	7,588	3,499	6,049	8,765
Amendment 80 ABC reserve	28,388	50,089	63,325	29,204	50,486	73,152

[1] The 2025 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21 (b), (e), (f), and (g), set forth the BSAI PSC limits. Section 679.21(b)(1) establishes three fixed halibut PSC limits totaling 1,770 mt, and assigns 315 mt of the halibut PSC limit as the PSQ reserve for use by the groundfish CDQ Program, 745 mt of the halibut PSC limit for the BSAI trawl limited access sector, and 710 mt of the halibut PSC limit for the BSAI non-trawl sector. An additional amount of BSAI halibut PSC limit for the Amendment 80 sector is determined annually based on the most recent halibut abundance estimates from the IPHC setline survey index and the NMFS AFSC Eastern Bering Sea shelf trawl survey index. In accordance with § 679.21(b)(1)(i), NMFS uses both halibut biomass estimates such that the value at the intercept of those survey indices from table 58 to 50 CFR part 679 is the Amendment 80 sector halibut PSC limit. The 2023 AFSC Eastern Bering Sea shelf trawl survey index estimate of halibut abundance is 170,238 mt and is above the threshold level of 150,000 mt. The IPHC setline survey index is 6,462 mt and is in the ''low'' abundance state. Pursuant to table 58 to 50 CFR part 679, the 2024 Amendment 80 sector halibut PSC limit is 1,396 mt. NMFS will publish the 2025 Amendment 80 sector halibut PSC limit in the 2025 and 2026 harvest specifications.

Section 679.21(b)(1)(iii)(A) and (B) require apportionment of the BSAI non-trawl halibut PSC limit into PSC allowances among six fishery categories in table 20, and § 679.21(b)(1)(ii)(A) and (B), (e)(3)(i)(B), and (e)(3)(iv) require apportionment of the trawl PSC limits in tables 17, 18, and 19 into PSC allowances among seven fishery categories. These apportionments into PSC allowances are based on the fishery categories' share of anticipated halibut PSC during the fishing year and the need to optimize the amount of total groundfish harvested under the halibut PSC limit for the non-trawl and trawl sectors.

Pursuant to Section 3.6 of the FMP, the Council recommends that certain specified non-trawl fisheries be exempt from the halibut PSC limit. NMFS concurs with this recommendation and exempts the pot gear fishery, the jig gear fishery, and the sablefish IFQ fixed gear fishery categories from halibut bycatch restrictions for the following reasons: (1) the pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires that legal-size halibut be retained by vessels using fixed gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (see § 679.7(f)(11)).

The 2023 total groundfish catch for the pot gear fishery in the BSAI was 43,527 mt, with an associated halibut bycatch mortality of 9 mt. The 2023 jig gear fishery harvested 22 mt total groundfish. Most vessels in the jig gear fleet are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. As mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Under § 679.21(f)(2), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on: (1) past bycatch performance; (2) whether Chinook salmon bycatch incentive plan agreements (IPAs) are formed and approved by NMFS; and (3) whether NMFS determines it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. The State provides to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), and if it is not a low Chinook salmon abundance year, then NMFS will allocate a portion of the 60,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if it is not a low abundance year, then NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(C). If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), in a low abundance year, then NMFS will allocate a portion of the 45,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if in a low abundance year, then NMFS will allocate a portion of the 33,318 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(D).

NMFS has determined that 2023 was a low Chinook salmon abundance year,

based on the State's estimate that Chinook salmon abundance in western Alaska is less than 250,000 Chinook salmon. In addition, all AFA sectors are participating in NMFS-approved IPAs, and no sector has exceeded the sector's annual Chinook salmon bycatch performance standard in any three of seven consecutive years. Therefore, in 2024, the Chinook salmon PSC limit is 45,000 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(B). In 2024, the Chinook salmon bycatch performance standard under § 679.21(f)(6) is 33,318 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(D). The AFA sector Chinook salmon PSC limits are also seasonally apportioned with 70 percent for the A season pollock fishery, and 30 percent for the B season pollock fishery (see §§ 679.21(f)(3)(i) and 679.23(e)(2)). NMFS publishes the approved IPAs, allocations, and reports at *https://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm.*

Section 679.21(g)(2)(i) specifies 700 fish as the 2024 and 2025 Chinook salmon PSC limit for the AI pollock fishery. Section 679.21(g)(2)(ii) allocates 7.5 percent, or 53 Chinook salmon, as the AI PSQ reserve for the CDQ program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(f)(14)(i) specifies 42,000 fish as the 2024 and 2025 non-Chinook salmon PSC limit for vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area (CVOA). Section 679.21(f)(14)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, in the CVOA as the PSQ reserve for the CDQ program, and allocates the remaining 37,506 non-Chinook salmon in the CVOA to the non-CDQ fisheries. Section 679.21(f)(14)(iv) exempts from closures in the Chum Salmon Savings Area trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

Based on the most recent (2023) survey data, the red king crab mature female abundance is estimated at 11.054 million red king crabs, and the effective spawning biomass is estimated at 20.055 million lbs (9,320 mt). Based on the criteria set out at § 679.21(e)(1)(i), the calculated 2024 and 2025 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance estimate above 8.4 million mature red king crab and an effective spawning biomass between 14.5 and 55 million lbs.

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify, after consultation with the Council, an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS) if the State has established a GHL fishery for red king crab in the Bristol Bay area in the previous year. The regulations limit the RKCSS red king crab bycatch limit to 25 percent of the red king crab PSC limit, based on the need to optimize the groundfish harvest relative to red king crab bycatch. In October 2023, the Council recommended, and NMFS approves, that the RKCSS red king crab bycatch limit for 2024 and 2025 be equal to 25 percent of the red king crab PSC limit.

Based on the most recent (2023) survey data from the NMFS annual bottom trawl survey, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 730 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2024 and 2025 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1, and 2,970,000 animals in Zone 2. The limit in Zone 1 is based on the total abundance of *C. bairdi* (estimated at 730 million animals), which is greater than 400 million animals. The limit in Zone 2 is based on the total abundance of *C. bairdi* (estimated at 730 million animals), which is greater than 400 million animals.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for trawl gear for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit in the *C. opilio* bycatch limitation zone (COBLZ) is set at 0.1133 percent of the Bering Sea abundance index minus 150,000 crabs, unless a minimum or maximum PSC limit applies. Based on the most recent (2023) survey estimate of 1.142 billion animals, the calculated *C. opilio* crab PSC limit is 1,143,886 animals. Because 0.1133 percent multiplied by the total abundance is less than 4.5 million animals, the minimum PSC limit applies, and the PSC limit is 4.350 million animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern BS herring biomass. The best estimate of 2024 and 2025 herring biomass is 253,511 mt. This amount was developed by ADF&G based on biomass for spawning aggregations. Therefore, the herring PSC limit for 2024 and 2025 is 2,535 mt for all trawl gear as listed in tables 16 and 17.

Section 679.21(e)(3)(i)(A)(*1*) allocates 10.7 percent from each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ program. Section 679.21(e)(3)(i)(A) requires that crab PSQ reserves be subtracted from the total trawl gear crab PSC limits. The crab and halibut PSC limits apportioned to the Amendment 80 and BSAI trawl limited access sectors are listed in table 35 to 50 CFR part 679. The resulting 2024 and 2025 allocations of PSC limit to CDQ PSQ reserves, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in table 16. Pursuant to §§ 679.21(b)(1)(i), 679.21(e)(3)(vi), and 679.91(d) through (f), crab and halibut trawl PSC limits assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as cooperative quota. Crab and halibut PSC cooperative quota assigned to Amendment 80 cooperatives is not allocated to specific fishery categories.

In 2024, there are no vessels in the Amendment 80 limited access sector and there is a single Amendment 80 cooperative. The 2025 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

The BSAI ITAC allocation of halibut and crab PSC limits to the PCTC Program is established in § 679.131(c) and (d). The halibut PSC apportioned to the trawl CV sector is 98 percent of the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category, and the remaining 2 percent is apportioned to the AFA CP sector. The trawl CV sector apportionment is further allocated to the A and B seasons (95 percent) and the C season (5 percent). The allocation to the trawl CV sector for the A and B season is subject to reductions consistent with § 679.131(c)(1)(iii). The crab PSC apportioned to the trawl CV sector is 90.6 percent of the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category, and the remaining 9.4 percent is apportioned to the AFA CP sector. The trawl CV sector apportionment is further allocated to the A and B seasons (95 percent) and the C season (5 percent), and the A and B season limit is reduced by 35 percent to determine the overall PCTC Program crab PSC limit. The limits of halibut and crab PSC for the PCTC Program are listed in tables 18 and 19, and in table 11 for PSC allowances for PCTC Program cooperatives.

Sections 679.21(b)(2) and (e)(5) authorize NMFS, after consulting with the Council, to establish seasonal apportionments of halibut and crab PSC amounts for the BSAI trawl limited access and non-trawl sectors to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) seasonal distribution of prohibited species; (2) seasonal distribution of target groundfish species relative to prohibited species distribution; (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species; (4) the expected variations in bycatch rates throughout the year; (5) the expected changes in directed groundfish fishing seasons; (6) the expected start of fishing effort; and (7) economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry. Based on this criteria, the Council recommended and NMFS approves the seasonal PSC apportionments in tables 18, 19, and 20 to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC. PSC limits for PCTC Program cooperatives are listed in table 11. PSC allocations among the CDQ groups are listed in table 22.

TABLE 16—FINAL 2024 AND 2025 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area and zone [1]	Total PSC	Non-trawl PSC	CDQ PSQ reserve [2]	Trawl PSC remaining after CDQ PSQ	Amendment 80 sector [3 4]	BSAI trawl limited access sector	BSAI PSC limits not allocated to Amendment 80 [3]
Halibut mortality (mt) BSAI	3,166	710	315	n/a	1,396	745	n/a
Herring (mt) BSAI	2,535	n/a	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1	97,000	n/a	10,379	86,621	43,293	26,489	16,839
C. opilio (animals) COBLZ	4,350,000	n/a	465,450	3,884,550	1,909,256	1,248,494	726,799
C. bairdi crab (animals) Zone 1	980,000	n/a	104,860	875,140	368,521	411,228	95,390
C. bairdi crab (animals) Zone 2	2,970,000	n/a	317,790	2,652,210	627,778	1,241,500	782,932

[1] Refer to § 679.2 for definitions of areas and zones.

[2] The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[3] The BSAI halibut PSC limit for the Amendment 80 sector is determined annually based on the most recent halibut abundance estimates from the IPHC setline survey index and the NMFS AFSC Eastern Bering Sea shelf trawl survey index (§ 679.21(b)(1)(i)). The Amendment 80 Program reduced apportionment of the trawl PSC limits for crab below the total PSC limit. These reductions are not apportioned to other gear types or sectors (table 35 to part 679).

[4] The Pacific Cod Trawl Cooperative (PCTC) Program reduced the Pacific cod PCTC Program PSC limit for halibut by 12.5 percent in 2024 and 25 percent in 2025 and each year after (§ 679.131(c)(1)(iii)(A and B)). The PCTC Program reduced the Pacific cod PCTC Program PSC limit for crab by 35 percent each year (679.131(d)(1)(iii)). The PSC limits apply to PCTC Program trawl CVs in the A and B seasons.

TABLE 17—FINAL 2024 AND 2025 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	146	n/a
Rock sole/flathead sole/Alaska plaice/other flatfish [1]	74	n/a
Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish	8	n/a
Rockfish	8	n/a
Pacific cod	13	n/a
Midwater trawl pollock	2,256	n/a
Pollock/Atka mackerel/other species [2 3]	30	n/a
Red king crab savings subarea non-pelagic trawl gear [4]	n/a	24,250
Total trawl PSC	2,535	97,000

Note: Species apportionments may not total precisely due to rounding.

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[2] Pollock other than midwater trawl pollock, Atka mackerel, and "other species" fishery category.

[3] "Other species" for PSC monitoring includes skates, sharks, and octopuses.

[4] In December 2024, the Council recommended, and NMFS approves, that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

TABLE 18—FINAL 2024 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTORS AND PACIFIC COD TRAWL COOPERATIVE PROGRAM

BSAI trawl limited access sector fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	C. opilio (animals) COBLZ	C. bairdi (animals)	
				Zone 1	Zone 2
Yellowfin sole	250	23,337	1,192,179	346,228	1,185,500
Rock sole/flathead sole/other flatfish [2]					
Greenland turbot/arrowtooth flounder/Kamchatka flounder/ sablefish					
Rockfish, April 15–December 31	5		1,006		1,000
Total Pacific cod [3]	315	2,955	50,281	60,000	50,000
AFA CP Pacific cod	6	278	4,726	5,640	4,700
PCTC Program Pacific cod, A and B season	257	1,653	28,130	33,567	27,973
Trawl CV Pacific cod, C season	15	134	2,278	2,718	2,265
PCTC Program unallocated reduction	37	890	15,147	18,075	15,062
Pollock/Atka mackerel/other species [4]	175	197	5,028	5,000	5,000
Total BSAI trawl limited access sector PSC	745	26,489	1,248,494	411,228	1,241,500

Note: Species apportionments may not total precisely due to rounding.

[1] Refer to § 679.2 for definitions of areas and zones.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[3] Amendment 122 established the Pacific Cod Trawl Cooperative (PCTC) Program that further apportioned the BSAI trawl limited access sector Pacific cod PSC limits for halibut and crab between AFA CPs, PCTC A and B-season, and open access C-season (§ 679.131(c) and (d)). In 2024, NMFS will apply a 12.5 percent reduction to the A and B season trawl CV sector halibut PSC apportionment after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories (§ 679.131(c)(1)(iii)). In 2025 and every year thereafter, NMFS will apply a 25 percent reduction to the A and B season trawl CV sector halibut PSC apportionment. The crab PSC limits are reduced for the A and B season trawl CV sector PSC limit by 35 percent each year (§ 679.131(d)(1)(iii)). Any amount of the PCTC Program PSC limit remaining after the B season may be reapportioned to the trawl CV open access fishery in the C season. Because the annual PSC limits for the PCTC Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the reduction to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the PCTC Program.

[4] "Other species" for PSC monitoring includes skates, sharks, and octopuses.

TABLE 19—FINAL 2025 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTORS AND PACIFIC COD TRAWL COOPERATIVE PROGRAM

BSAI trawl limited access sector fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	C. opilio (animals) COBLZ	C. bairdi (animals)	
				Zone 1	Zone 2
Yellowfin sole	250	23,337	1,192,179	346,228	1,185,500
Rock sole/flathead sole/other flatfish [2]					
Greenland turbot/arrowtooth flounder/Kamchatka flounder/ sablefish					
Rockfish April 15–December 31	5		1,006		1,000
Total Pacific cod [3]	315	2,955	50,281	60,000	50,000
AFA CP Pacific cod	6	278	4,726	5,640	4,700
PCTC Program Pacific cod, January 20–June 10	220	1,653	28,130	33,567	27,973
Trawl CV Pacific cod, June 10–November 1	16	134	2,278	2,718	2,265
PCTC Program unallocated reduction	73	890	15,147	18,075	15,062
Pollock/Atka mackerel/other species [4]	175	197	5,028	5,000	5,000
Total BSAI trawl limited access sector PSC	745	26,489	1,248,494	411,228	1,241,500

Note: Species apportionments may not total precisely due to rounding.

[1] Refer to § 679.2 for definitions of areas and zones.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[3] Amendment 122 established the Pacific Cod Trawl Cooperative (PCTC) Program that further apportioned the BSAI trawl limited access sector Pacific cod PSC limits for halibut and crab between AFA CPs, PCTC A and B-season, and open access C-season (§ 679.131(c) and (d)). In 2025 and every year thereafter, NMFS will apply a 25 percent reduction to the A and B season trawl CV sector halibut PSC apportionment after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories (§ 679.131(c)(1)(iii)). The crab PSC limits are reduced for the A and B season trawl CV sector PSC limit by 35 percent each year (§ 679.131(d)(1)(iii)). Any amount of the PCTC Program PSC limit remaining after the B season may be reapportioned to the trawl CV open access fishery in the C season. Because the annual PSC limits for the PCTC Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the reduction to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the PCTC Program.

[4] "Other species" for PSC monitoring includes skates, sharks, and octopuses.

TABLE 20—FINAL 2024 AND 2025 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

Non-trawl fisheries	Seasons	Halibut mortality (mt) BSAI		
		Catcher processor	Catcher vessel	All non-trawl
Pacific cod	Total Pacific cod	648	13	661
	January 1–June 10	388	9	n/a
	June 10–August 15	162	2	n/a
	August 15–December 31	98	2	n/a
Non-Pacific cod non-trawl-Total	May 1–December 31	n/a	n/a	49
Groundfish pot and jig	n/a	n/a	n/a	Exempt
Sablefish hook-and-line	n/a	n/a	n/a	Exempt
Total for all non-trawl PSC	n/a	n/a	n/a	710

Note: Seasonal or sector allowances may not total precisely due to rounding.

Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut stock using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2023 Pacific halibut stock assessment (December 2023), available on the IPHC website at *https://www.iphc.int.* The IPHC considered the 2023 Pacific halibut stock assessment at its January 2024 annual meeting when it set the 2024 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates (DMRs)

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observed estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, SSC, and the Council. A summary of the revised methodology is included in the BSAI proposed 2017 and 2018 harvest specifications (81 FR 87863, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). The methodology continues to ensure that NMFS is using DMRs that accurately reflect halibut mortality, which will inform the sectors of their estimated halibut mortality and allow sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the December 2023 meeting, the SSC, AP, and the Council concurred with the revised DMR estimation methodology, and NMFS adopts for 2024 and 2025 the DMRs calculated under the revised methodology, which uses an updated 2-year reference period, except pot gear uses an updated 4-year reference period. The final 2024 and 2025 DMRs in this rule are unchanged from the DMRs in the proposed 2024 and 2025 harvest specifications (88 FR 84278, December 5, 2023). Table 21 lists these final 2024 and 2025 DMRs.

TABLE 21—2024 AND 2025 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI

Gear	Sector	Halibut discard mortality rate (percent)
Pelagic trawl	All	100
Non-pelagic trawl	Mothership and catcher/processor	85
Non-pelagic trawl	Catcher vessel	63
Hook-and-line	Catcher/processor	7
Hook-and-line	Catcher vessel	7
Pot	All	26

Community Development Quota Group Quotas

In 2006, Public Law 109–241 amended section 305(i)(1) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)). This law specifies the allocation of CDQ groundfish and PSC amounts among the six CDQ groups. The six groups are the Aleutian Pribilof Island Community Development Association (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fisherman's Association (CBSFA), Coastal Villages Regional Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta

Fisheries Development Association (YDFDA). NMFS published the CDQ and CDQ PSQ percentages on August 31, 2006 (71 FR 51804, August 31, 2006). Those percentages applied to the CDQ amounts in these harvest specifications are shown in table 22.

TABLE 22—2024 CDQ PROGRAM QUOTA CATEGORIES, TARGET CDQ RESERVES, PROHIBITED SPECIES QUOTA (PSQ) RESERVES, AND CDQ GROUP QUOTAS

Species or species group	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	Total
Groundfish CDQ Species	**CDQ Group Quotas**						
Groundfish units are in metric tons							
BS Pollock A season	8,190	12,285	2,925	14,040	12,870	8,190	58,500
BS Pollock B season	10,010	15,015	3,575	17,160	15,730	10,010	71,500
BS Pollock Total	18,200	27,300	6,500	31,200	28,600	18,200	130,000
AI Pollock	266	399	95	456	418	266	1,900
BS FG Sablefish	120	160	128	.....	144	248	800
AI FG Sablefish	177	241	38	342	291	177	1,266
BS Sablefish	63	66	27	39	39	66	300
AI Sablefish	41	32	13	21	19	33	158
BS Pacific cod	2,371	3,320	1,423	2,846	2,846	3,004	15,810
AI Pacific cod	130	182	78	156	156	164	865
WAI Atka Mackerel	770	385	205	385	359	462	2,565
CAI Atka Mackerel	538	269	143	269	251	323	1,793
EAI/BS Atka Mackerel	1,036	518	276	518	483	621	3,452
Yellowfin Sole	5,842	5,008	1,669	1,252	1,461	5,634	20,865
Yellowfin Sole ABC reserves	2,125	1,821	607	455	531	2,049	7,588
Rock Sole	1,695	1,624	565	777	777	1,624	7,062
Rock Sole ABC reserves	1,440	1,380	480	660	660	1,380	6,002
BS Greenland Turbot	46	58	23	49	55	58	288
Arrowtooth Flounder	330	330	135	195	180	330	1,498
Flathead Sole	760	798	342	570	570	760	3,799
Flathead Sole ABC reserves	680	714	306	510	510	680	3,401
WAI Pacific Ocean Perch	401	201	107	201	187	241	1,338
CAI Pacific Ocean Perch	177	89	47	89	83	106	591
EAI Pacific Ocean Perch	256	128	68	128	119	153	853
PSQ							
Halibut PSQ is in metric tons. Crab and salmon PSQ are in number of animals							
Zone 1 Red King Crab	2,491	2,180	830	1,245	1,245	2,387	10,379
Zone 1 Bairdi Tanner Crab	27,264	25,166	8,389	8,389	8,389	27,264	104,860
Zone 2 Bairdi Tanner Crab	76,270	73,092	25,423	34,957	31,779	76,270	317,790
COBLZ Opilio Tanner Crab	116,363	111,708	37,236	46,545	37,236	116,363	465,450
Pacific Halibut	69	69	28	38	38	72	315
BS Chinook Salmon A season	547	820	195	937	859	547	3,906
BS Chinook Salmon B season	139	208	50	238	218	139	990
BS Chinook Salmon total	685	1,028	245	1,175	1,077	685	4,896
AI Chinook Salmon	7	11	3	13	12	7	53
Non-Chinook Salmon	629	944	225	1,079	989	629	4,494

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a DFA for a species or species group if the Regional Administrator determines that any allocation or apportionment of a target species has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea, regulatory area, or district (see § 679.20(d)(1)(iii)). Similarly, pursuant to § 679.21(b)(4) and (e)(7), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab, or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species or species group in that fishery category in the area specified by regulation for the remainder of the season or fishing year.

Based on historical catch patterns and anticipated fishing activity, the Regional Administrator has determined that the groundfish allocation amounts in table 23 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2024 and 2025 fishing years. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species and species groups in table 23 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these sectors and species or species groups in the specified areas effective at 1200 hours, A.l.t., March 11, 2024, through 2400 hours, A.l.t., December 31, 2025. Also, for the BSAI trawl limited access sector, bycatch allowances of halibut, red king crab, *C. bairdi* crab, and *C. opilio* crab listed in table 23 are insufficient to support directed fisheries for the species and species groups listed in table 23. Therefore, in accordance with § 679.21(b)(4)(i) and (e)(7), NMFS is prohibiting directed fishing for these sectors, species, and fishery categories in the specified areas effective at 1200

hours, A.l.t., March 11, 2024, through 2400 hours, A.l.t., December 31, 2025.

TABLE 23—2024 AND 2025 DIRECTED FISHING CLOSURES [1]

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals.]

Area	Sector	Species	2024 Incidental catch allowance	2025 Incidental catch allowance
Bogoslof District	All	Pollock	250	250
Aleutian Islands subarea	All	Greenland Turbot	426	366
Aleutian Islands subarea	All	ICA pollock	3,420	3,420
		"Other rockfish" [2]	380	380
Aleutian Islands subarea	Trawl non-CDQ	Sablefish	1,794	1,794
Eastern Aleutian District/Bering Sea.	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Atka mackerel	800	800
Eastern Aleutian District/Bering Sea.	All	Blackspotted/Rougheye rockfish	330	350
Eastern Aleutian District	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Pacific ocean perch	100	100
Central Aleutian District	Non-amendment 80, CDQ, and BSAI trawl limited access.	ICA Atka mackerel	75	75
		ICA Pacific ocean perch	60	60
Western Aleutian District	Non-amendment 80, CDQ and BSAI trawl limited access.	ICA Atka mackerel	20	20
		ICA Pacific ocean perch	10	10
Western and Central Aleutian Districts.	All	Blackspotted/Rougheye rockfish	181	195
Bering Sea subarea	Trawl non-CDQ	Sablefish	3,398	4,038
Bering Sea subarea	All	Pacific ocean perch	9,891	9,716
		"Other rockfish" [2]	748	748
		ICA pollock	50,000	50,000
Bering Sea and Aleutian Islands		Shortraker rockfish	451	451
		Skates	25,941	25,807
		Sharks	340	340
		Octopuses	340	340
	Hook-and-line and pot gear	ICA Pacific cod	500	500
	All	ICA flathead sole	3,000	3,000
		ICA rock sole	6,000	6,000
	All	ICA yellowfin sole	4,000	4,000
	BSAI trawl limited access	Rock sole/flathead sole/other flatfish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.		
		Turbot/arrowtooth/Kamchatka/sablefish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.		
		Rockfish—red king crab Zone 1		

[1] Maximum retainable amounts may be found in table 11 to 50 CFR part 679.

[2] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for dark rockfish, Pacific ocean perch, northern rockfish, blackspotted/rougheye rockfish, and shortraker rockfish.

Closures implemented under the final 2023 and 2024 BSAI harvest specifications for groundfish (88 FR 14926, March 10, 2023) remain effective under authority of these final 2024 and 2025 harvest specifications and until the date specified in those closure notifications. Closures are posted at the following website under the Alaska filter for Management Area: *https://www.fisheries.noaa.gov/rules-and-announcements/bulletins.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found at 50 CFR part 679.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA CPs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as sideboard limits on catch. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CPs from directed fishing for all groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and table 54 to 50 CFR part 679). Section 679.64(a)(1)(v) exempts AFA CPs from a yellowfin sole sideboard limit because the final 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and tables 40 and 41 to 50 CFR part 679 establish a formula for calculating PSC sideboard limits for halibut and crab caught by

listed AFA CPs. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). PSC species listed in table 24 that are caught by listed AFA CPs participating in any groundfish fishery other than pollock will accrue against the final 2024 and 2025 PSC sideboard limits for the listed AFA CPs. Section 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA CPs once a final 2024 or 2025 PSC sideboard limit listed in table 24 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by listed AFA CPs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories, according to § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 24—FINAL 2024 AND 2025 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species and area [1]	Ratio of PSC catch to total PSC	2024 and 2025 PSC available to trawl vessels after subtraction of PSQ [2]	2024 and 2025 AFA catcher/processor sideboard limit [2]
Halibut mortality BSAI	n/a	n/a	286
Red king crab Zone 1	0.0070	86,621	606
C. opilio (COBLZ)	0.1530	3,884,550	594,336
C. bairdi Zone 1	0.1400	875,140	122,520
C. bairdi Zone 2	0.0500	2,652,210	132,611

[1] Refer to § 679.2 for definitions of areas.
[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the pollock directed fishery. Section 679.64(b)(3) and (b)(4) and tables 40 and 41 to 50 CFR part 679 establish formulas for setting AFA CV groundfish and halibut and crab PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002), Amendment 80 (72 FR 52668, September 14, 2007), and Amendment 122 (88 FR 53704, August 8, 2023). Section 679.64(b)(6) exempts AFA CVs from a yellowfin sole sideboard limit because the final 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CVs from directed fishing for a majority of the groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and table 55 to 50 CFR part 679). The only remaining sideboard limit for non-exempt AFA CVs is for Pacific cod. Pursuant to Amendment 122 to the FMP, the Pacific cod sideboard limit is no longer necessary in the A and B seasons because directed fishing in the BSAI for Pacific cod by trawl CVs is now managed under the PCTC Program, and accordingly the sideboard limit is in effect in the C season only (§ 679.64(b)(3)(ii)). Table 25 lists the final 2024 and 2025 AFA CV groundfish sideboard limits.

TABLE 25—FINAL 2024 AND 2025 BSAI PACIFIC COD SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)

[Amounts are in metric tons]

Fishery by area/gear/season	Ratio of 1997 AFA CV catch to 1997 TAC	2024 ITAC for C season	2024 AFA catcher vessel sideboard limit	2025 ITAC for C season	2025 AFA catcher vessel sideboard limit
Pacific cod BSAI	n/a	n/a	n/a	n/a	n/a
Trawl gear CV	n/a	n/a	n/a	n/a	n/a
Jun 10–Nov 1	0.8609	4,613	3,971	4,168	3,588

Note: Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the final 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in table 26 that are caught by AFA CVs participating in any groundfish fishery other than pollock will accrue against the 2024 and 2025 PSC sideboard limits for the AFA CVs. Section 679.21 (b)(4)(iii), (e)(3)(v), and (e)(7) authorizes NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a final 2024 or 2025 PSC sideboard limit listed in table 26 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by AFA CVs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories under § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 26—FINAL 2024 AND 2025 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species and area [1]	Target fishery category [2]	AFA catcher vessel PSC sideboard limit ratio	2024 and 2025 PSC limit after subtraction of PSQ reserves [3]	2024 and 2025 AFA catcher vessel PSC sideboard limit [3]
Halibut	Pacific cod trawl	n/a	n/a	n/a
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/Alaska plaice/other flatfish [4]	n/a	n/a	228
	Greenland turbot/arrowtooth/Kamchatka/sablefish	n/a	n/a	
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species [5]	n/a	n/a	5
Red king crab Zone 1	n/a	0.2990	86,621	25,900
C. opilio COBLZ	n/a	0.1680	3,884,550	652,604
C. bairdi Zone 1	n/a	0.3300	875,140	288,796
C. bairdi Zone 2	n/a	0.1860	2,652,210	493,311

[1] Refer to § 679.2 for definitions of areas.
[2] Target trawl fishery categories are defined at §§ 679.21(b)(1)(ii)(B) and (e)(3)(iv).
[3] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[4] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[5] ''Other species'' for PSC monitoring includes skates, sharks, and octopuses.

Response to Comments

NMFS received 5 letters raising 17 distinct comments during the public comment period for the proposed BSAI groundfish harvest specifications (88 FR 84278, December 5, 2023). NMFS's responses are below.

Comment 1: The BSAI harvest specifications do not consider the impact of offshore wind on the marine environment.

Response: This is outside of the scope of the harvest specifications. The final rule implementing the harvest specifications sets the OFL, ABC, and TAC for target species in the BSAI, but does not regulate or authorize offshore wind. There is no current or planned offshore wind project in Alaska State waters or EEZ waters off of Alaska.

Comment 2: Salmon are important for the cultural well-being of Alaska native tribes. Climate change is negatively affecting salmon and additive pressure from the pollock fishery is exacerbating their declines. Maintaining the status quo TAC for pollock harvest will result in continued bycatch and impacts to salmon and halibut as the pollock industry catches more individual salmon and halibut as bycatch than directed and subsistence fishermen of Alaska are allocated for their survival and livelihoods.

Response: NMFS recognizes that salmon are paramount to the cultural well-being for indigenous peoples of Alaska. NMFS also recognizes that climate change is affecting the survival of western Alaska Chinook and chum salmon in their freshwater and marine life stages.

The annual TAC setting process is a robust, expansive process that involves significant scientific input and includes consideration of current environmental and ecosystem factors (*e.g.,* climate change) and other marine resources (*e.g.,* salmon and halibut). Scientists from the AFSC prepare the assessment using sophisticated statistical analyses of fish populations and draft the written assessment for a species or species group, which for eastern BS (EBS) pollock is a full assessment updated annually and for AI pollock is a full assessment updated biennially. The assessments for the BSAI are informed by the most recent survey and harvest data available, including multiple surveys in the EBS scheduled annually and in the AI every other year. The stock assessment then undergoes rigorous review by the scientists and resource managers on the Plan Team and SSC.

During this annual TAC setting process, the Plan Team, SSC, AP, and Council review several sources comprising the best scientific information available—the ESRs, Ecosystem and Socioeconomic Profiles (ESP), stock assessments, and Plan Team report—and use all these materials as reference in their OFL, ABC, and TAC recommendations to NMFS. NMFS reviews the same information for its annual decision to implement the OFL, ABC, and TAC for BSAI groundfish. Updates on salmon abundance estimates, commercial salmon catch, and the physical environment are included in the ESR and ESP. For an overview of the ESR and ESP, refer to the response to Comment 3.

The stock assessment author and Plan Team make a recommendation for OFL and ABC for each species and species group, and the SSC may concur with this recommendation or make a different recommendation. Ultimately, the SSC recommends the OFL and ABC (*i.e.,* the biological reference points) that inform the setting of the TAC (the harvest target/limit) for each species and species group since TAC cannot exceed ABC (see Section 3.2.3.4.1 of the FMP and 50 CFR 600.310(g)(4)). This ensures that the TAC for each species and species group does not exceed the scientific recommendations for ABC and OFL.

OFL and ABC are calculated using prescribed methods set forth in the FMP. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest. The methods for calculating OFL and ABC (including the ABC control rule) become more precautionary depending on the tier and stock status: for example, with less reliable information the larger the buffer (reduction) between OFL and ABC, and as stock status declines the OFL and ABC are reduced.

The specification of ABC is informed by the ecosystem, environmental, and socioeconomic factors presented in the ESRs and in the stock assessment, specifically the stock-specific risk table prepared for each stock as well as an

additional ecosystem considerations section prepared for full/operational assessments like pollock. For EBS pollock, for example, the ecosystem considerations section of the stock assessment analyzes the fishery's effects on the ecosystem, such as bycatch of non-target species like salmon. The 2023 ESRs also provide information on the status of salmon in the BS ecosystem and AI ecosystem, including updated information on the abundance of salmon, fish condition, the run size of Bristol Bay sockeye salmon, the Yukon and Kuskokwim chum runs and subsistence harvest, abundance and role of eastern Kamchatka pink salmon in the Aleutian Islands, and trends in directed commercial catch of salmon. The 2023 EBS ESR also included an overview of foraging and energetics for Pacific halibut. The specification of the pollock TACs is therefore based on the best scientific information available on the status of the pollock stock and accounts for ecosystem, environmental, and socioeconomic factors, including bycatch of non-target species like salmon. The 2023 SAFE report chapter for EBS pollock is available at *https://www.npfmc.org/wp-content/PDFdocuments/SAFE/2023/EBSpollock.pdf.*

As described above, NMFS and the Council considered the status of Chinook and chum salmon in the harvest specifications process. In addition, the harvest specifications announce Chinook bycatch limits based on promulgated regulations implementing Amendments 91 and 110 to the FMP. NMFS and the Council have previously taken comprehensive action through Amendments 91 and 110 to the FMP and implementing regulations to reduce salmon bycatch in the pollock trawl fishery because of the potential for negative impacts on salmon stocks. Existing measures have reduced salmon bycatch in the pollock fishery compared with what they would have been without the measures. Regulations set limits on how many Chinook salmon can be caught in a year in the Bering Sea pollock fishery, and those regulations require that NMFS announce the applicable Chinook salmon limits in the harvest specifications (see § 679.21(f)). Pursuant to § 679.21(f), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on: (1) past bycatch performance; (2) whether Chinook salmon bycatch incentive plan agreements (IPAs) are formed and approved by NMFS; and (3) whether NMFS determines it is a low Chinook salmon abundance year (see § 679.21(f)). NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon, based on the estimate provided by the State. The State provides NMFS with an estimate of Chinook salmon abundance using the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

For 2023, NMFS determined it was a low abundance year based on the State's 3-System Index. In accordance with the regulations at § 679.21(f), NMFS has specified a Chinook salmon PSC limit of 45,000 Chinook salmon, and a Chinook salmon bycatch performance standard of 33,318 Chinook salmon for the 2024 fishing year. NMFS publishes the approved IPAs, allocations, and reports at *https://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm.* Bycatch of salmon is posted on the NMFS website at *https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports-alaska.*

For each fishing year, the Bering Sea pollock fleet is constrained by the limit of Chinook salmon PSC set in regulation (as explained above), regardless of the size of the pollock TAC and harvest. The AFA sectors are prohibited from continuing to fish if their Chinook salmon PSC limit has been exceeded. Further, if the sector exceeds its performance standard in 3 of 7 years, that sector becomes constrained by the performance standard in future years (meaning, the sector would be subject to a lower PSC limit in future years).

Regulations set limits on Chinook salmon PSC for the AI pollock fishery and non-Chinook salmon PSC for vessels using trawl gear. These are static limits set in regulations and are announced in the groundfish harvest specifications each year. Regulations also set limits on Pacific halibut PSC in the groundfish fisheries. Section 679.21(b)(1) establishes a fixed halibut PSC of 745 mt for the BSAI trawl limited access sector. The Council and NMFS apportion for seven trawl fishery categories a PSC allowance from the fixed limit of 745 mt. Halibut PSC in the pollock fisheries accrues to a specific fishery category—the pollock/Atka mackerel/other species fishery category, as specified in regulations. For 2024 and 2025, the allowance for the pollock/Atka mackerel/other species fishery category is 175 mt (see tables 18 and 19).

Ultimately, NMFS manages salmon bycatch in the pollock fishery through a variety of tools that apply at all levels of pollock TAC. The tools for both salmon and halibut bycatch include the Chinook salmon PSC limits (which are announced in these annual harvest specifications), halibut PSC limits set in regulation (which are also announced in these annual harvest specifications), IPAs to address Chinook and chum bycatch, and a comprehensive monitoring program to collect data on bycatch, including salmon and halibut bycatch. The information from this monitoring program is used to estimate how many Chinook and chum salmon are caught as bycatch from trawl vessels, where those fish came from, and whether a potential violation of law occurred.

NMFS acknowledges the western Alaska salmon crisis and the impact it is having on culture and food security throughout western Alaska. Science indicates climate change as the primary driver of poor salmon returns in western Alaska. Scientists from NMFS continue to study the impacts of climate change on salmon and halibut. For example, scientists from NMFS and the State found that recent heat wave events created conditions where energy allocation and prey quality was affected and added stress to western Alaska chum salmon at critical life stages (see Farley, Jr., *et al.,* 2024; *https://www.int-res.com/abstracts/meps/v726/p149-160*). Additionally, as discussed in the response to Comment 10, the best scientific evidence indicates that the numbers of the ocean bycatch that would have returned to western Alaska rivers would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch.

NMFS and the Council are committed to continued improvements in bycatch management with a goal of minimizing bycatch at all levels of abundance for target species (*i.e.,* pollock) and PSC. NMFS and the Council are currently engaged in a comprehensive process to evaluate existing measures and develop alternatives that may be necessary to further reduce chum salmon bycatch. More information on this process can be found at *https://www.npfmc.org/fisheries-issues/bycatch/salmon-bycatch/.* However, the Chinook salmon and Pacific halibut PSC limits and the conditions that affect the limits are set in regulations, and changes to those regulations are outside of the scope of the annual harvest specification process. NMFS believes that changes to bycatch management of all prohibited species, including Chinook salmon, chum salmon, and Pacific halibut, are best accomplished through the Council

process to recommend FMP amendments and regulations that NMFS would implement if consistent with the Magnuson-Stevens Act, the FMP, and other applicable law.

Comment 3: Management of fisheries, including TAC setting and PSC limits, should include ecosystem based fishery management.

Response: The annual process for specifying TAC for groundfish in the BSAI is a scientifically-driven process informed by the best available information on the status of the marine ecosystems off Alaska. Each year, ESRs are prepared for the BS and AI ecosystems (as well as the Gulf of Alaska (GOA) ecosystem). The intent of the ESRs is to provide the Plan Team, SSC, AP, Council, and NMFS, as well as the public, with a broad overview of the current status of the marine ecosystems. The ESRs are drafted by scientists and staff from NOAA, other federal and state agencies, academic institutions, tribes, and non-profits, and they compile and summarize information about the status of the Alaska marine ecosystems and represent the best scientific information available. The ESRs include information on the physical environment and oceanography, climate data, biological data, marine resources, and socio-ecological dimensions to provide context for the specification of OFL, ABC, and TAC. For example, the 2024 ESR for the EBS includes: (1) a synthesis of the physical environment (*e.g.,* temperature, sea ice, and cold pool); (2) an analysis of primary production (*e.g.,* phytoplankton and zooplankton); (3) trends for non-target species and discards (*e.g.,* jellyfish, forage fish, herring, and salmon); (4) integrated information on seabirds; (5) recruitment predictions; (6) emerging stressors; and (7) a sustainability index. The 2024 EBS ESR is available at *https://apps-afsc.fisheries.noaa.gov/REFM/docs/2023/EBSecosys.pdf.*

Information from the ESRs are integrated in stock assessments, primarily through the risk tables that are prepared for each stock. The risk table includes evaluation of four considerations: (1) assessment-related; (2) population dynamics; (3) environmental/ecosystem; and (4) fishery performance. The risk table is meant to inform the specification of ABC by accounting for additional scientific uncertainty that is not addressed in the stock assessment model used to calculate OFL and ABC based on the stock's tier and the corresponding OFL and ABC control rules in the FMP. Because TAC cannot exceed ABC, reductions in ABC based on the risk table result in additional precaution in the catch limits for groundfish of the BSAI. The risk table can highlight changes in ecosystem conditions. For example, in the 2023 EBS pollock SAFE report, the risk table assessed several environmental and ecosystem considerations that warranted an elevated level of concern, including environmental/oceanographic factors related to climate change, status in fish condition over year classes, declining trends in northern fur seal pup production on St. Paul Island, and mixed trends in the status of potential competitors like jellyfish and salmon (Bristol Bay sockeye salmon have continued to sustain high inshore runs, and sockeye salmon compete with both juvenile and adult pollock for prey). Based on the elevated ecosystem risk identified in the risk table, the SSC reduced the EBS pollock ABC by 18 percent.

Some stock assessments also include an individual ESP. The ESP was developed as a framework for organizing and evaluating ecosystem and socioeconomic information about an individual stock. The ESP informs environmental and ecosystem considerations, population dynamics, and fisheries performance in the risk table. For example, the ESP for EBS Pacific cod assesses numerous ecosystem indicators that include physical indicators, lower tropic indicators, and upper trophic indicators. The ESP for EBS Pacific cod is available at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2023/EBSpcod_app2.pdf.*

Stock assessment authors consider a variety of ecosystem-related factors when preparing their assessments, which are thoroughly reviewed by the Plan Team and the SSC. Stock assessment authors will include, if possible, relevant ecosystem-related factors into their modeling. Many models use variables that are potentially ecosystem-related, climate-impacted like size and condition of fish (*i.e.,* length and weight) and recruitment, and some models integrate specific environmental factors that have been influenced by climate change, such as the extent of the cold pool and bottom temperature in the survey area.

The information from the ESRs, stock assessments, and ESPs allows the Plan Team, SSC, AP, Council, and NMFS to respond to ecosystem changes and stock changes in the BSAI and to adjust the harvest specifications as necessary. This is consistent with the FMP and the preferred harvest strategy analyzed in the Final EIS and implemented each year for the specification of TAC. The Final EIS contemplated that ABCs could be reduced based on ecosystem considerations (Chapter 11 of Final EIS). The harvest strategy is designed such that the most recent information would be used each year in setting the annual harvest specification. The process is flexible to incorporate current information on stock abundance and harvest and environmental, ecosystem, and socioeconomic factors (*e.g.,* physical and ecosystem changes associated with climate change). Similarly, the FMP contemplates ongoing consideration of relevant factors (*e.g.,* ecosystem considerations and climate change) through the development of SAFE reports (Section 3.2.2.2 of the FMP). The use of the most recent, best available information in the SAFE reports allows the Council and NMFS to respond to changes in stock condition and environmental, ecosystem, and socioeconomic factors in the BSAI and to adjust the harvest specifications as appropriate, which is also consistent with National Standard 2 of the Magnuson-Stevens Act to use the best scientific information available (16 U.S.C. 1851(a)(2)).

NMFS is committed to supporting science and research to continue to improve the process of effective ecosystem-based management by refining the existing tools and developing new tools for incorporating ecosystem and socioeconomic information.

As noted in response to Comment 2, PSC limits and the conditions that affect the limits are set in regulations, and changes to those regulations are outside of the scope of the annual harvest specification process.

Comment 4: The Alaska Groundfish Harvest Specifications EIS is outdated and NMFS must prepare a new or supplemental EIS on the harvest specifications. New species listings and critical habitat designations, climate change, vessel strikes and disturbance, entanglement, habitat impacts, prey competition, bycatch, and plastics constitute significant new or cumulative information requiring supplementation.

Response: Groundfish harvests are managed subject to annual limits on the retained and discarded amounts of each species and species group. The ''harvest strategy'' is the method used to calculate these annual limits, referred to as ''harvest specifications,'' and the process of establishing them is referred to as the ''specifications process.'' NMFS prepared the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS) to analyze the environmental, social, and economic impacts of alternative harvest strategies used to determine the annual harvest

specifications for the federally managed groundfish fisheries in the GOA and BSAI management areas.

The purpose of the harvest strategy is to: (1) provide for orderly and controlled commercial fishing for groundfish; (2) promote sustainable incomes to the fishing, fish processing, and support industries; (3) support sustainable fishing communities; and (4) provide sustainable flows of fish products to consumers. The harvest strategy balances groundfish harvest in the fishing year with ecosystem needs (*e.g.,* non-target fish stocks, marine mammals, seabirds, and habitat). Importantly, the harvest strategy and specification process are designed to use the best available scientific information developed each year through the annual SAFE (including the ESR process) to calculate the status determination criteria, assess the status of each stock, and set the TACs.

In a ROD, NMFS selected one of the alternative harvest strategies: to set TACs that fall within the range of ABCs recommended through the harvest specifications process that includes review by the Plan Team and SSC. NMFS concluded that the preferred harvest strategy analyzed in the Final EIS and selected in the ROD provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. NMFS has not changed the harvest strategy or specifications process from what was analyzed in the Final EIS.

Each year the harvest strategy uses the best scientific information available in the annual SAFE reports to derive the annual harvest specifications, which include TACs and PSC limits. Through this process, each year, the Council's Groundfish Plan Teams use updated stock assessments to calculate biomass, OFLs, and ABCs for each species and species group for specified management areas. The OFLs and ABCs are published with the harvest specifications, and provide the foundation for the Council and NMFS to develop the TACs. The OFLs and ABCs reflect fishery science, applied in light of the requirements of the FMPs. The Council bases its TAC recommendations on those of its AP, which are consistent with the SSC's OFL and ABC recommendations (*i.e.,* the TAC recommendations cannot exceed the SSC's ABC and OFL recommendations).

The Final EIS evaluates the consequences of alternative harvest strategies on ecosystem components and on the ecosystem as a whole. The Final EIS evaluates the alternatives for their effects within the action area. The environmental consequences of each alternative were considered for target species, non-specified species, forage species, prohibited species, marine mammals, seabirds, Essential Fish Habitat, ecosystem relationships, the economy, and environmental justice. These considerations were evaluated based on the conditions as they existed at the time the Final EIS was developed, but the Final EIS also anticipated potential changes in these conditions, including climate change, could be incorporated, as appropriate, through the annual implementation of the harvest strategy. Each year since 2007 relevant changes (*i.e.,* new information, changed circumstances, potential changes to the action) are considered with the primary purpose of evaluating the need to supplement the Final EIS.

NEPA implementing regulations at 40 CFR 1502.9(d) instruct agencies to prepare supplements to either draft or final environmental impact statements if there remains a major federal action left to occur and: (i) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Ultimately, an agency is required ''to take a 'hard look' at the new information to assess whether supplementation might be necessary.'' (see *Norton* v. *S. Utah Wilderness All.,* 542 U.S. 55, 72–73 (2004)).

A SIR for the Final EIS is prepared each year to take that ''hard look'' and document the evaluation and decision whether a supplemental EIS (SEIS) is necessary to implement the annual groundfish harvest specifications, consistent with NEPA regulations (see 40 CFR 1502.9(d)) and NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities, Companion Manual for NOAA Administrative Order 216–6A. The Companion Manual authorizes the use of a SIR to document a review of new information or circumstances and determine the sufficiency of the existing NEPA analysis for implementing a component or step of the action analyzed in that existing analysis.

The SIR prepared each year for the annual harvest specifications analyzes the information contained in the most recent SAFE reports and all information available to NMFS and the Council to determine whether an SEIS must be prepared to implement the annual harvest specifications. The SAFE reports represent the best scientific information available for the harvest specifications. Included in the SAFE reports are the groundfish stock assessments and any ESPs, the ESRs, and the Economic Status Report. To date, no annual SIR to the Final EIS has concluded that an SEIS is necessary.

The SIR recognizes the preferred harvest strategy analyzed in the Final EIS and selected in the ROD was built on an annual process to compile and utilize the most recent, best scientific information available on species abundance and condition, harvest and survey data, environmental and ecosystem factors, and socio-economic conditions. The Final EIS contemplates the annual process includes flexibility that allows for the implementation of annual harvest specifications that reflect new information and changing circumstances in the context of the considerations in the Final EIS. NMFS has determined that the 2024 and 2025 harvest specifications for the BSAI and GOA are consistent with the preferred alternative harvest strategy analyzed in the Harvest Specifications EIS because they were set through the harvest specifications process, are within the optimum yield established for both the BSAI and the GOA, and do not set TAC to exceed the ABC for any single species or species group.

The SIR assesses new information and circumstances. Based on the SIR, NMFS concluded that the best available, most recent information presented on species abundance and condition, environmental and ecosystem factors, and socio-economic conditions and used to set the 2024 and 2025 harvest specifications does not represent a significant change relative to the environmental impacts of the preferred harvest strategy analyzed in the Harvest Specifications EIS.

The Harvest Specifications EIS identifies reasonably foreseeable future actions, which inform the analysis in the SIR regarding new circumstances and which include catch share management, traditional fisheries management tools, ecosystem-sensitive management, and actions by other federal, state, and international agencies and private actions. This section of the SIR assesses information and circumstances regarding: (1) bycatch management of salmon, crab, and halibut; (2) habitat impacts; (3) seabirds; and (4) marine mammals, including Endangered Species Act (ESA) listed

species like Steller sea lions, humpback whales, sperm whales, and fin whales, and unlisted species like northern fur seals and killer whales. In this assessment, the SIR relies on the 2023 SAFE reports, other analyses prepared to support NMFS management actions, updated catch and bycatch data, and other best available scientific information to conclude any new information and circumstances do not present a seriously different picture of the likely environmental harms of the action to occur—the annual implementation of the 2024 and 2025 groundfish harvest specifications—beyond what was considered in the Harvest Specifications EIS. More details are provided in the SIR (see **ADDRESSES**).

Based on the SIR prepared in conjunction with these harvest specifications, NMFS determined that the 2024 and 2025 groundfish harvest specifications do not constitute a substantial change in the proposed action analyzed in the Final EIS and will not affect the human environment in a significant manner or to a significant extent not already considered in the Harvest Specifications EIS. Accordingly, supplementation of the Final EIS is not required for NMFS to approve and implement the 2024 and 2025 groundfish harvest specifications of the BSAI and GOA.

Comment 5: NMFS should develop a programmatic EIS and initiate a NEPA analysis that includes government-to-government consultation with Alaska Native Tribes, or otherwise supplement the Alaska Groundfish Programmatic Supplemental Environmental Impact Statement.

Response: As outlined in response to Comment 4, NMFS prepared the Alaska Groundfish Harvest Specifications Final EIS to analyze alternatives to implement the FMPs' harvest strategy and specifications process, which outlines the method and process used to determine the annual harvest specifications for the federally managed groundfish fisheries in the GOA and BSAI management areas. NMFS also must specify PSC allowances in the annual harvest specifications. The Final EIS evaluates the consequences of alternative harvest strategies on ecosystem components and on the ecosystem as a whole, as well as their effects within the action area. Ultimately, from the analysis in the Final EIS, NMFS selected a preferred harvest strategy that NMFS uses each year for the specifications process. Each year, NMFS also evaluates whether supplementation of that Final EIS is required, consistent with NEPA regulations, to implement the harvest specifications. Based on the SIR prepared in conjunction with these harvest specifications, NMFS determined that supplementation of the Alaska Groundfish Harvest Specifications Final EIS was not required. NMFS therefore implements these harvest specifications consistent with the Alaska Groundfish Harvest Specifications Final EIS.

Separate from the Final EIS for the Alaska Groundfish Harvest Specifications, NMFS and the Council prepared the Alaska Groundfish Programmatic Supplemental Environmental Impact Statement (PSEIS). The PSEIS evaluated alternative policies and objectives for the management of the groundfish fisheries in the BSAI and GOA. The action analyzed in the PSEIS is different from the action analyzed in the Alaska Groundfish Harvest Specifications Final EIS, and as explained above NMFS implements the harvest specifications consistent with the Final EIS analyzing that action. In addition to the preparation of the Harvest Specifications Final EIS, since the PSEIS the Council and NMFS have prepared for FMP amendments and regulatory changes the appropriate NEPA analyses to support the implementation of those specific FMP or regulatory changes.

Finally, the Council and NMFS are now considering a new action to revise the management policies and objectives for the groundfish fisheries, as well as for all Council-managed fisheries, off Alaska. The Council requested that NMFS initiate the development of a Programmatic EIS to analyze alternatives for the revisions of policies, objectives, and goals for all Council-managed fisheries in June of 2023. At its February 2024 meeting, the Council addressed the process for the development of a new Programmatic EIS to evaluate its action alternatives for management policies and objectives for fisheries off Alaska. Based on a motion passed at the meeting, in 2024 through early 2025 the Council and NMFS will gather input from Alaska Native Tribes and stakeholders to inform the direction and structure of alternatives analyzed under a Programmatic EIS, and NMFS will begin the NEPA scoping process. There will be multiple public meetings, in addition to Council-hosted workshops, to support the development and analysis of alternatives, and NMFS will work with Alaska Native Tribes to ensure meaningful and timely government-to-government consultation consistent with Executive Order 13175 and NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribal Governments.

Comment 6: NMFS must account for climate change in its decision-making.

Response: Climate change is accounted for in NMFS's decision-making on the annual implementation of the harvest specifications, consistent with the harvest strategy in the FMP and analyzed in the Final EIS. The Final EIS analyzed alternatives for an implementing framework for the BSAI and GOA harvest strategy and evaluated the potential effects of those alternatives on the human environment (see response to Comment 4). The Final EIS examined existing physical and oceanographic conditions in the BSAI and GOA, and addressed climate and ecological regime shifts, warming and loss of sea ice, and acidification (see Chapter 3.5 of the Final EIS), as well as systemic ecosystem impacts (see Chapter 11 of the Final EIS).

Moreover, the framework process for the preferred harvest strategy under the Final EIS allows for the effects of climate change to be considered in the annual process for setting the harvest specifications. As addressed in response to Comment 3, the annual ESR is part of the SAFE reports that the Council and its Plan Teams, SSC, and AP annually review prior to the review of the stock assessments and advancing recommendations to NMFS for the annual OFLs, ABCs, and TACs. The purpose of the ESRs is to provide the Council, scientific community, and the public, as well as NMFS, with annual information about ecosystem status and trends, and they include physical oceanography, biological data, and socio-ecological dimensions, primarily collected from AFSC surveys with collaboration from a range of government and non-government partners. The ESRs provide the scientific review body (the SSC) with context for the annual biological reference points (OFLs and ABCs), and for the Council's final TAC recommendations for groundfish, which are constrained by those biological reference points. Information from the ESRs are also integrated into the annual harvest recommendations through inclusion in stock assessment-specific risk tables. There are many examples of climate change considerations presented in the ESR, including: (1) physical indicators and oceanographic metrics of climate change (*e.g.,* sea surface and bottom temperatures and sea-ice and cold pool extents); (2) impacts from oceanographic changes (*e.g.,* changes in sea ice and cold pool extents resulting in distributional shifts (northward) in stocks); (3) climate-driven changes to

metabolic demands and foraging conditions tied to declining conditions for groundfish during recent marine heatwaves; (4) impacts of anomalously warm conditions in the marine and river environments on juveniles and adults of certain salmon stocks; and (5) emerging stressors like ocean acidification and implications for species (*e.g.,* crab).

In some instances, the Plan Teams and SSC have recommended ABC reductions based on climate change considerations. As explained in response to Comment 3, stock assessments use a stock-assessment specific risk table that is applied by evaluating the severity of four types of considerations (*i.e.,* assessment-related, population dynamics, environmental/ecosystem, and fishery performance) that could be used to support a scientific recommendation to reduce the ABC. As one environmental/ecosystem consideration, scientists noted that multiple indicators of primary and secondary productivity show adverse signals borne out in continued declining trends in juvenile and adult fish condition. That consideration warranted an increased level concern under the risk table. These risk tables are now prepared as part of the stock assessment process for groundfish stocks and help inform the setting of ABC (which in turn informs the setting of TAC).

Finally, the FMP indicated that the ongoing consideration of factors like climate change would be addressed annually in the SAFE reports (see Sections 3.2.2.2 and 3.2.3.1.2 of the FMP), as is currently the case with the both individual stock assessments and the ESRs. As a result, the annual harvest specifications process, which implements the preferred harvest strategy under the Final EIS, allows for the consideration of the best scientific information available on climate change (16 U.S.C. 1851(a)(2)).

Comment 7: The BSAI groundfish specifications are based upon a rigorous public process that includes the best available science when setting OFLs, ABCs and TACs, including climatic, ecosystem, and socioeconomic data and analyses. This process combined with statutorily mandated limits results in a very conservative and precautionary final result.

Response: NMFS agrees with this comment. For more details on the groundfish harvest specifications process, see responses to Comments 2–4. As noted by the commenter, the process is driven by statutory and regulatory requirements. The Magnuson-Stevens Act directs that the Council's recommended annual catch limits (ACL) cannot ''exceed the fishing level recommendations of its [SSC]'' (16 U.S.C. 1852(h)(6)). NMFS has interpreted ''fishing level recommendation'' to be the ABC recommendation from the SSC (50 CFR 600.310(b)(2)(v)(D)). This ensures that the ACL does not exceed the ABC developed by the SSC. Under the FMP, the ACL is equal to the ABC, and the annual TAC specified for each stock must be lower than or equal to the ABC (see Sections 3.2.3.3.2 and 3.2.3.4 of the FMP). This is in accord with National Standard 1 and regulations that the TAC cannot exceed the ABC/annual catch limit (see 50 CFR 600.310(g)(4)), and ABC must be set equal to or less than OFL (see § 600.310(f)(3) and (4)). The SSC recommends for each species and species group an OFL and an ABC. NMFS specifies TAC after consultation with the Council, and annual determinations of TAC are based on review of both the biological condition of the specific species or species group and socioeconomic considerations (see § 679.20(a)(2)-(3)).

Comment 8: The age three plus pollock biomass is estimated to be over ten million tons. The commenter supports the 2024 EBS pollock TAC of 1.3 million metric tons, even though the OFL and ABC could support a much higher TAC.

Response: NMFS agrees. Consistent with the National Standard 1 guidelines, NMFS may implement a TAC up to the ABC (for 2024, the Bering Sea pollock final ABC is 2,313,000 mt and the final TAC is 1,300,000 mt, a reduction in forty four percent from the ABC). In the BSAI, however, the sum of all TACs well exceed the sum of all ABCs (for 2024, the sum of final ABCs is 3,476,800, and final TACs is 2,000,000 mt, a reduction in forty two percent). As a result, TACs for pollock and other species are set often lower than ABC to ensure the sum of all TACs falls within the OY range (see § 679.20(a)(1)(i)(A) and 679.20(a)(2)). While there is precaution built into the specification of each ABC (representing scientific uncertainty) and TAC (representing management uncertainty) for a species or species group, the OY range is constraining and therefore precautionary across the ecosystem in the BSAI by reducing fishery removals and therefore also reducing impacts to the ecosystem.

Comment 9: The impacts of the pollock fishery on ecosystem impacts have been thoroughly examined. The harvest is well within historical norms. There is a regular essential Fish Habitat review process associated with this fishery. Using the best available science, the estimated habitat disturbance estimates have declined and remain around 5 percent for the EBS and around 1 percent for the AI.

Response: NMFS agrees. The impacts of the pollock fishery have been examined in various documents, including in the annual SAFE report chapters for pollock and in several NEPA documents supporting FMP amendments and regulatory changes (see response to Comment 11). Each year's TAC amount for pollock is informed by a significant amount of data, modeling, and research. This includes annual surveys, updated catch information, weight and age data, updated statistical modeling, and risks that may fall outside of the stock estimation process (see response to Comment 3 explaining reduction in 2024 pollock ABC to account for elevated concern regarding environmental/ecosystem considerations). Information on habitat disturbance has been evaluated in the Essential Fish Habitat 5-Year Reviews and information can be found at *https://www.fisheries.noaa.gov/alaska/habitat-conservation/essential-fish-habitat-efh-alaska.* Any changes to management of the trawl fisheries to address habitat disturbance, however, are outside the scope of this final rule, which implements catch limits for the groundfish fisheries in the BSAI.

Comment 10: Unchanged EBS pollock TAC relative to 2023 should not be expected to measurably increase or decrease salmon escapement to western Alaska. Salmon catches and runs have fluctuated greatly in recent years, while pollock catch has remained stable. Under the IPAs, the estimated average annual number of bycatch Chinook salmon that would have returned to western Alaska is 7,705 and less than two percent of the coastal western Alaska run size from 2011 through 2020. The bycatch of chum salmon in the pollock fishery is estimated to be less than one percent of the coastal western Alaska run size and the majority of the catch is estimated to be from hatchery fish originating from Asia. Increase in chum salmon bycatch is more closely related to increased bottom temperature and increased Asian hatchery production than it is to pollock allocation.

Response: NMFS agrees that the best science available suggests that climate change rather than the pollock fishery is the primary driver of declines in salmon run returns to western Alaska. While salmon bycatch in the pollock fishery may be a contributing factor in the decline of salmon, NMFS expects the numbers of the ocean bycatch that would have returned to western Alaska

would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch.

For Chinook salmon, total bycatch in the Bering Sea pollock fishery is reported annually, and includes bycatch of salmon from stocks across Alaska, the Pacific Northwest, and other countries like Russia. NMFS, Council, and State scientists regularly prepare adult equivalence (AEQ) analyses of Chinook salmon that estimate the number of Chinook salmon that would have returned to river systems had they not been caught as bycatch in the Bering Sea pollock fishery. For 2021, the estimate of bycaught salmon that would have returned to western Alaska is 8,610 fish, with an average of 7,705 fish from 2011 through 2020. Considering run sizes for salmon returns to western Alaska, scientists also calculate the ''impact rate.'' Using this impact rate, the bycatch expected to have returned to western Alaska rivers is less than 2 percent per year since 2011, as reported in the 2023 EBS pollock SAFE report. Information on the bycatch of salmon in the BSAI groundfish fisheries, including the pollock fisheries, can be found at *https://www.npfmc.org/fisheries-issues/bycatch/salmon-bycatch/.* For more information on NMFS's management of bycatch in the BS and AI pollock fisheries, see the response to Comment 2.

For chum salmon, total bycatch in the Bering Sea pollock fishery is reported annually and includes bycatch of salmon from stocks across Alaska, the Pacific Northwest, and Asia. NMFS, Council, and State scientists analyze genetic stock compositions of chum salmon samples collected from the PSC in the Bering Sea pollock fishery. Scientists are able to estimate the number of chum salmon bycaught in the Bering Sea pollock fishery that originate from western Alaska (in 2022, 21 percent); however, NMFS does not have an AEQ analysis for chum salmon equivalent to the analysis for Chinook salmon. At the Council's March 2023 Salmon Bycatch Committee meeting, the most recent 2022 genetic data indicates that only 21 percent of chum bycatch is of western Alaska origin, while the largest component is from Asian hatchery stocks. NMFS also notes that the increase in Asian chum hatchery fish is a potential concern for the North Pacific ecosystem and is a topic warranting further research.

Comment 11: The TAC for pollock should reflect the true environmental cost of trawling.

Response: The SAFE report chapter for EBS pollock evaluates annually the EBS pollock fishery's effects on the ecosystem, as well as ecosystem effects on the EBS pollock stock (see sections titled ''Ecosystem effects on the EBS pollock stock'' and ''EBS pollock fishery effects on the ecosystem'' at *https://www.npfmc.org/wp-content/PDFdocuments/SAFE/2023/EBSpollock.pdf*). The most recent full/operational assessment for AI pollock similarly includes an evaluation of the AI pollock fishery's effects on the ecosystem, as well as ecosystem effects on AI pollock and a broad overview of ecosystem considerations at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2022/AIpollock.pdf.* In addition, ecosystem considerations, as well as the impact on communities and incidentally caught species, are considered and updated annually in the ESRs and ESPs. The Final EIS supporting the harvest specifications also evaluated environmental and ecosystem considerations, and the environmental impacts of the pollock fishery have been analyzed in a number of subsequent NEPA documents, including the Environmental Impact Statement for Amendment 91 to the FMP and the Environmental Assessment for Amendment 110 to the FMP.

Comment 12: NMFS should reduce catch to 1 million mt to account for ecosystem impacts from harvest.

Response: The FMP and implementing regulations direct that the sum of the TACs specified for the BSAI ''must be within the OY range specified'' in regulation, which for the BSAI is 1.4 to 2.0 million mt (see § 679.20(a)(1)(i)(A) and (a)(2)). NMFS cannot reduce TAC in the BSAI to 1 million mt consistent with the FMP and implementing regulations. NMFS previously set, and the Council previously recommended, the OY as a range of 1.4 to 2.0 million mt. This OY is set forth in the FMP and in regulation, and is based on the sum of all TACs. NMFS has therefore determined that, in any given year, setting the TACs to fall within that range provides the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems and relevant economic, social, or ecological factors (see § 600.310(e)(3)).

Here, NMFS concurs with the Council's recommendation that TACs fall within the upper bound (*i.e.,* 2.0 million mt). Setting TACs to meet the upper bound of the OY range of 2.0 million mt, while also recognizing that total TACs represent a 42 percent reduction below total ABCs, balances relevant National Standard 1 considerations. Setting TACs at the higher bound of the OY will provide the greatest benefit for the Nation based on the benefits of maintaining viable groundfish fisheries and contributions to regional and local economies. That total groundfish TAC is 42 percent below total ABC recognizes the benefits that flow from that reduction, such as protections afforded to marine ecosystems, forage for ecosystem components, and other ecological factors (see § 600.310(e)(3)(iii)(A)–(B)). For 2024 and 2025, NMFS has specified TACs to sum to the upper end of the OY range, which NMFS has determined is consistent with the National Standard 1, the FMP, and the harvest strategy analyzed in the Final EIS.

Comment 13: To be in compliance with Section 7 and Section 9 of the ESA, NMFS must analyze impacts of the groundfish trawl fisheries under the ESA through Section 7 consultations and must reinitiate consultation on the groundfish trawl fisheries to consider new species listings and critical habitat designations, climate change, vessel strikes and disturbance, entanglement, habitat impacts, prey competition, bycatch, and plastics.

Response: NMFS approves and implements the harvest specifications if they are consistent with the Magnuson-Stevens Act and other applicable law, including the ESA. NMFS has determined that these final 2024 and 2025 harvest specifications for the BSAI are consistent with the ESA. NMFS has evaluated the impacts of the BSAI groundfish fishery on ESA-listed species and designated critical habitat in a number of consultations. These consultations are on the groundfish fishery managed under the BSAI FMP and are not specific to certain gear types (*e.g.,* trawl or fixed gear). The biological opinions are publicly available at *https://www.fisheries.noaa.gov/alaska/consultations/section-7-biological-opinions-issued-alaska-region#fisheries.*

NMFS agrees that reinitiation of ESA Section 7 consultation is required, and indeed NMFS has already reinitiated consultation. In November 2022, NMFS reinitiated consultation on both the BSAI groundfish fishery and the GOA groundfish fishery in light of information indicating that reinitiation under 50 CFR 402.16 was required, including revised species designations (*i.e.,* for listed humpback whales) and new critical habitat designations. In light of the extensive scope of the actions under consultation, NMFS agreed to extend the timeframes to complete the consultations, in accordance with 50 CFR 402.14(e).

When NMFS reinitiated consultation in November 2022, NMFS determined that the operation of the groundfish fisheries off Alaska (BSAI and GOA) during the anticipated reinitiation period would not violate ESA sections 7(a)(2) and 7(d). In implementing these harvest specifications, NMFS determined that the operation of the groundfish fisheries off Alaska (BSAI and GOA) under the final 2024 and 2025 harvest specifications would not violate ESA sections 7(a)(2) and 7(d). NMFS recognizes the agency's obligation to ensure the actions over a longer term are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat as a jeopardy or adverse modification/destruction determination commensurate with the temporal scope of the action is appropriately made only in a biological opinion.

Section 7(d) of the ESA prohibits Federal agencies from making any irreversible or irretrievable commitment of resources with respect to the agency action that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives at the conclusion of the consultation. This prohibition is in force until the requirements of section 7(a)(2) have been satisfied. Resource commitments may occur as long as the action agency retains sufficient discretion and flexibility to modify its action to allow formulation and implementation of appropriate reasonable and prudent alternatives. NMFS has discretion to amend its Magnuson-Stevens Act and ESA regulations and may do so at any time subject to the Administrative Procedure Act and other applicable laws. At the conclusion of ESA section 7 consultation on the BSAI groundfish fishery, NMFS will retain sufficient discretion and flexibility to evaluate and make necessary changes to fishery regulations and management plans for the formulation and implementation of appropriate reasonable and prudent alternatives, if required to do so under the ESA.

During the consultation, existing regulatory measures that offer protection to listed species, including Steller sea lion protection measures and humpback whale approach regulations, will continue to be in effect, and NMFS will continue to implement the reasonable and prudent measures and terms and conditions necessary or appropriate to minimize the amount or extent of incidental take. NMFS has and will continue to monitor take in the groundfish fisheries consistent with the terms and conditions of the biological opinions. NMFS also has authority under 50 CFR part 679 to implement annual SSL protection measures, such as the harvest limitations implemented through the annual groundfish harvest specifications, and to close directed fishing for pollock, Pacific cod, and Atka mackerel if a biological assessment indicates the stock condition for that species is at or below 20 percent of its unfished spawning biomass during a fishing year (see § 679.20(d)(4)).

In consulting on the BSAI and GOA groundfish fisheries and preparing new biological opinions and incidental take statements, NMFS will incorporate the most recent, best scientific and commercial data available, including information relating to climate change, to assess effects from the groundfish fisheries, such as vessel strikes and disturbance, entanglement, prey competition, and habitat impacts.

Comment 14: NMFS must ensure compliance with the MMPA for the BSAI groundfish trawl fisheries that incidentally take ESA-listed species and must consider those species and stocks with human-caused mortality and seriously injury at levels at or approaching potential biological removal (PBR) or for those whose PBR is unknown.

Response: NMFS approves and implements the harvest specifications if they are consistent with the Magnuson-Stevens Act and other applicable law, including the MMPA. NMFS has determined that these final 2024 and 2025 harvest specifications are consistent with the MMPA. The BSAI (and GOA) groundfish fisheries identified as a Category I or II fishery that interact with ESA-listed species have a valid MMPA section 101(a)(5)(E) permit (86 FR 24384, May 6, 2021) and include the AK Bering Sea, Aleutian Islands flatfish trawl fishery and the AK Bering Sea, Aleutian Islands pollock trawl fishery.

Pursuant to Section 101(a)(5)(E) of the MMPA, NMFS shall allow taking of ESA-listed marine mammals incidental to commercial fishing operations if NMFS makes a number of determinations regarding negligible impact, recovery plans, and where required take reductions plans, monitoring programs, and vessel registration (16 U.S.C. 1371(a)(5)(E)). In May 2021, NMFS issued permits for the two BSAI groundfish fisheries that require MMPA permits for the incidental take of ESA-listed species (86 FR 24384, May 6, 2021). NMFS determined that the issuance of those permits complied with the MMPA and implementing regulations regarding the negligible impact determination, recovery plans, take reductions plans, monitoring programs, and vessel registration (86 FR 24384). The permits expire in May 2024, and NMFS is in the process of evaluating the required determinations for the re-issuance of the Section 101(a)(5)(E) permits for the two Category II groundfish fisheries in the BSAI (*i.e.,* the pollock trawl and flatfish trawl (Amendment 80 sector)).

NMFS regularly updates marine mammal stock assessments and reports of human-caused mortalities and serious injuries of marine mammals. The long-term goal under the MMPA is to reduce the level of mortality and serious injury of marine mammals to insignificance levels (see 16 U.S.C. 1387(b)), which is defined as 10 percent of the stocks' PBR (50 CFR 229.2). PBR is defined 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 (50 CFR 229.2). Based on the best scientific information available, the level of mortality and serious injury (M/SI) of ESA-listed stocks that interact with the two Category II groundfish fisheries in the BSAI is currently below 10 percent of those stocks' PBR. PBR and incidental M/SI for each ESA-listed stock with M/SI in the AK Bering Sea, Aleutian Islands flatfish trawl fishery are as follows:

- Bearded seal, Beringia—PBR = 8,210, M/SI = 1.2, M/SI as percent of the stock's PBR = 0.01 percent
- Humpback whale, Western North Pacific—PBR = 0.2, M/SI = 0, M/SI as percent of stock's PBR = 0 percent
- Ringed seal, Arctic—PBR = 4,755, M/SI = 4.6, M/SI as percent of the stock's PBR = 0.097 percent, and
- Steller sea lion, Western U.S—PBR = 299, M/SI = 13, M/SI as percent of the stock's PBR = 4.3 percent.

PBR and incidental M/SI for each ESA-listed stock with M/SI in the AK Bering Sea, Aleutian Islands pollock trawl fishery are as follows:

- Bearded seal, Beringia—PBR = 8,210, M/SI = 0.6, M/SI as percent of the stock's PBR = 0.007 percent
- Humpback whale, Mexico-North Pacific—PBR is undetermined, M/SI = 0.03
- Humpback whale, Western North Pacific—PBR = 0.2, M/SI = 0.008, M/SI as percent of stock's PBR = 4 percent
- Ringed seal, Arctic—PBR = 4,755, M/SI = 0.2, M/SI as percent of the stock's PBR = 0.004 percent, and
- Steller sea lion, Western U.S—PBR = 299, M/SI = 6.8, M/SI as percent of the stock's PBR = 2.2 percent.

Further details on the proposed issuance of the Section 101(a)(5)(E) permits for the two Category II groundfish fisheries in the BSAI will be available in a proposed notice published in the **Federal Register** separate from the harvest specifications process.

Based on the best scientific information available, the level of M/SI of other strategic stocks that interact with the two Category II groundfish fisheries in the BSAI is below 10 percent of those stocks' PBR. PBR and incidental M/SI for each strategic stock (unlisted) with M/SI in the AK Bering Sea, Aleutian Islands flatfish trawl fishery are as follows:

- Northern fur seal, Eastern Pacific—PBR =11,403, M/SI = 2.7, M/SI as percent of the stock's PBR = 0.02 percent.

Comment 15: NMFS must reevaluate the stock structure for the Eastern North Pacific Alaska Resident Stock of killer whales.

Response: This is outside of the scope of this final rule to implement the groundfish harvest specifications for the BSAI. NMFS notes that it currently intends to initiate by January 2025 a review of available information about whether there are multiple demographically independent populations of killer whales within the currently-defined Eastern North Pacific Alaska resident killer whale stock. The Eastern North Pacific Alaska resident killer whale stock, as currently defined, includes resident killer whales in Southeast Alaska, the Gulf of Alaska, the Aleutian Islands, and the Bering Sea. This evaluation would involve experts from NMFS's Alaska, Northwest, and Southwest Fisheries Science Centers. Should the agency find that there are demographically independent populations of killer whales and subsequently decide to describe new stocks of killer whales in Alaska, that would be accomplished through the development of new draft stock assessment reports. These would be made available for public review and comment separate from the harvest specifications process.

Comment 16: NMFS must ensure there are mitigation measures in place for killer whales and other non-ESA listed marine mammals that interact with the fisheries.

Response: This is outside of the scope of this final rule to implement the groundfish harvest specifications for the BSAI. As noted in response to Comment 14, NMFS has determined that these final 2024 and 2025 harvest specifications for the BSAI are consistent with the requirements of the MMPA. NMFS is concerned about the higher than normal number of killer whale incidental catches in the BSAI trawl fisheries in 2023. NMFS continues to investigate and prepare updated analyses on killer whales stocks, including through NMFS's marine mammal stock assessment reports and reports of human-caused mortalities and serious injuries of marine mammals. NMFS also recently released a new technical memorandum, Killer Whale Entanglements in Alaska: Summary Report 1991–2022. More information is available at the following websites: *https://www.fisheries.noaa.gov/feature-story/cause-death-determined-11-killer-whales-incidentally-caught-fishing-gear-alaska-2023* and *https://www.fisheries.noaa.gov/resource/document/killer-whale-entanglements-alaska*.

Comment 17: Under the Magnuson-Stevens Act, NMFS can only approve a plan, a plan amendment, harvest specifications, or allow other fishing activity to occur or continue pursuant to permits if such actions do not violate other applicable laws, like NEPA, ESA, and MMPA.

Response: As addressed in the Classification section (below) and the response to Comments, NMFS has determined that implementing the 2024 and 2025 groundfish harvest specifications for the BSAI is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws. As explained in responses to Comments 4–5, 13, and 14, NMFS has determined that this final rule is consistent with NEPA, ESA, and MMPA. In addition, this final rule specifies the OFL, ABC, and TAC for target species in the BSAI. Any FMP amendments, regulations, and permitting alluded to in the comment are outside the scope of this final rule implementing the harvest specifications for the BSAI.

Changes to the Final Rule

NMFS undertook a thorough review of the relevant comments received during the public comment period. However, for reasons described in the preceding section, no changes to the final rule were made in response to any of the comments received.

After incorporating new or updated fishery and survey data, considering Council recommendations and the 2023 SAFE reports, and accounting for State harvest levels, NMFS has made several updates from the proposed rule. TACs were adjusted based on the final ABCs and, in general, TACs for species with higher economical value increasing and TACs with lower economic value decreasing. The increase in Pacific cod TAC in the BS is an example of this. A detailed description of many of these changes can be found above (see ''Changes from the Proposed 2024 and 2025 Harvest Specifications for the BSAI'') The TAC changes are also summarized in table 1a. The changes to TACs between the proposed and final harvest specifications are based on the most recent scientific, biological, ecosystem, and socioeconomic information and are consistent with the FMP, regulatory obligations (including the required OY range of 1.4 million to 2.0 million mt), and the harvest strategy.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the Magnuson-Stevens Act. Through previous actions, the FMP and regulations are designed to authorize NMFS to take this action (see 50 CFR part 679). The NMFS Assistant Administrator has determined that the final harvest specifications are consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866 because it only implements annual catch limits in the BSAI.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS identifying the selected alternative (Alternative 2). NMFS prepared a Supplementary Information Report (SIR) for this action to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (SEIS) (40 CFR 1501.11(b) and 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. The preferred alternative is a harvest strategy in which TACs are set at a level within the range of ABCs recommended through the Council harvest specifications process by the Council's SSC. The sum of the TACs also must achieve the OY specified in

the FMP and regulations. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The latest annual SIR evaluated the need to prepare an SEIS for the 2024 and 2025 groundfish harvest specifications. A SEIS must be prepared if a major federal action remains to occur and: (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (see § 1502.9(d)(1)). After reviewing the most recent, best available information, including the information contained in the SIR and SAFE report, the Regional Administrator has determined that: (1) the 2024 and 2025 harvest specifications, which were set according to the preferred harvest strategy, do not constitute a substantial change in the action; and (2) the information presented does not indicate that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Any new information and circumstances do not present a seriously different picture of the likely environmental harms of the action to occur—the implementation of these harvest specifications—beyond what was considered in the Final EIS, and the 2024 and 2025 harvest specifications will result in environmental, social, and economic impacts within the scope of those analyzed and disclosed in the Final EIS. Therefore, a SEIS is not necessary to implement the 2024 and 2025 harvest specifications.

A final regulatory flexibility analysis (FRFA) was prepared. Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. The following constitutes the FRFA prepared for these final 2024 and 2025 harvest specifications.

Section 604 of the RFA describes the required contents of a FRFA: (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration 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 comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of 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 that affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are included at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 5, 2023 (88 FR 84278). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed action, and included the IRFA in the proposed rule. The comment period closed on January 4, 2024. No comments were received on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State waters. These include entities operating CVs and CPs within the action area and entities receiving direct allocations of groundfish.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $11 million for all its affiliated operations worldwide.

Using the most recent data available (2022), the estimated number of directly regulated small entities includes approximately 130 CVs, 2 CPs, 6 CDQ groups, and three motherships. Some of these vessels are members of AFA inshore pollock cooperatives, Gulf of Alaska rockfish cooperatives, or BSAI Crab Rationalization Program cooperatives, and, since under the RFA, the aggregate gross receipts of all participating members of the cooperative must meet the ''under $11 million'' threshold, the cooperatives are considered to be large entities within the meaning of the RFA. Thus, the estimate of 130 CVs may be an overstatement of the number of small entities. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs are estimated to be $800,000, $1.5 million, and $2.7 million, respectively. Average gross revenues for CP entities are confidential. There are three AFA cooperative affiliated motherships, which appear to fall under the 750-worker threshold and are therefore small entities. The average gross revenues for the AFA motherships are confidential.

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

This action implements the final 2024 and 2025 harvest specifications, apportionments, and prohibited species catch limits for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits for groundfish during the 2024 and 2025 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the final harvest specifications is governed by the Council and NMFS's harvest strategy for the catch of groundfish in the BSAI. The harvest strategy was previously selected from among five alternatives. Under this preferred alternative harvest strategy, TACs are set within the range of ABCs recommended through the Council harvest specifications process by the SSC, and while the specific TAC numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. The sum of the TACs must achieve the OY specified in the FMP and regulations. This final action implements the preferred alternative harvest strategy previously chosen by the Council and NMFS to set TACs that fall within the range of ABCs recommended through

the Council harvest specifications process and as recommended by the Council. This is the method for determining TACs that has been used in the past.

The final 2024 and 2025 TACs associated with the preferred harvest strategy are those recommended by the Council in December 2023. OFLs and ABCs for each species and species group were based on recommendations prepared by the Council's Plan Team, and reviewed by the Council's SSC. The Council's TAC recommendations are consistent with the SSC's OFL and ABC recommendations, and the sum of all TACs remains within the OY for the BSAI consistent with § 679.20(a)(1)(i)(A). Because setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2 million mt, TACs for some species and species groups are lower than the ABCs recommended by the Plan Team and the SSC.

The final 2024 and 2025 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The final 2024 and 2025 TACs are based on the best available biological and socioeconomic information. The final 2024 and 2025 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2023 SAFE report, which is the most recent, completed SAFE report, as well as the ecosystem and socioeconomic information presented in the 2023 SAFE report (including the BS ESR and AI ESR). Accounting for the most recent information to set the final OFLs, ABCs, and TACs is consistent with the objectives for this action, as well as National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2)) that actions shall be based on the best scientific information available.

Under this action, the ABCs reflect harvest amounts that are less than the specified overfishing levels. The TACs are within the range of ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and OFLs). For some species and species groups in the BSAI, the Council recommended, and NMFS sets, TACs equal to ABCs, which is intended to maximize harvest opportunities in the BSAI. However, NMFS cannot set TACs for all species in the BSAI equal to their ABCs due to the constraining OY limit of 2 million mt. For this reason, some final TACs are less than the final ABCs. These specific reductions were reviewed and recommended by the Council's AP, and then reviewed and adopted by the Council as the Council's recommended final 2024 and 2025 TACs.

Based on the best available scientific data, and in consideration of the Council's objectives for this action, there are no significant alternatives that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. This action is economically beneficial to entities operating in the BSAI, including small entities. The action specifies TACs for commercially-valuable species in the BSAI and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council and NMFS solicited input from stakeholders, the Council concluded and NMFS determines that these final harvest specifications would best accomplish the stated objectives articulated in the preamble for this final rule and in applicable statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the date of effectiveness for this rule because delaying this rule is contrary to the public interest. The Plan Team review of the 2023 SAFE report occurred in November 2023, and based on the 2023 SAFE report the Council considered and recommended the final harvest specifications in December 2023. Accordingly, NMFS's review of the final 2024 and 2025 harvest specifications could not begin until after the December 2023 Council meeting, and after the public had time to comment on the proposed action.

For all fisheries not currently closed because the TACs established under the final 2023 and 2024 harvest specifications (88 FR 14926, March 10, 2023) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period because their TACs could be reached within that period. If implemented immediately, this rule would allow these fisheries to continue fishing because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing. Because this rule relieves a restriction for fisheries subject to lower TACs under the final 2023 and 2024 harvest specifications (88 FR 14926, March 10, 2023), it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). For those fisheries not currently closed because the TACs established under the final 2023 and 2024 harvest specifications have not yet been reached, it is possible that their TACs could be reached within that 30-day period and NMFS would have to close those fisheries prior to the expiration of a 30-day delayed effectiveness period. If those fisheries closed, they would experience a restriction in fishing. If this rule is implemented immediately, this rule would relieve the potential for those fisheries to be restricted and would allow these fisheries to continue fishing because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing.

In addition, immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly pertinent for those species that have lower 2024 ABCs and TACs than those established in the 2023 and 2024 harvest specifications (88 FR 14926, March 10, 2023). If implemented immediately, this rule would ensure that NMFS can properly manage those fisheries for which this rule sets lower 2024 ABCs and TACs, which are based on the most recent biological information on the condition of stocks, rather than managing species under the higher TACs set in the previous year's harvest specifications.

Certain fisheries, such as those for pollock, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sharks, and octopuses, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If the date of effectiveness of this rule were to be delayed 30 days and if a TAC were to be reached during those 30 days, NMFS would be required to close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards, thus undermining the intent of this rule. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the

2024 TACs (set under the 2023 and 2024 harvest specifications) be reached. Determining which fisheries may close is nearly impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before initial season's end could deny the intended economic protection to the non-sideboard limited sectors. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard-limited sectors.

If these final harvest specifications are not effective by March 15, 2024, which is the start of the 2024 Pacific halibut season as specified by the IPHC, the fixed gear sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. Delayed effectiveness of this action would result in confusion for sablefish harvesters and economic harm from the unnecessary discard of sablefish that are caught along with Pacific halibut, as both fixed gear sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of these final 2024 and 2025 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

Finally, immediate effectiveness also would provide the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TAC limits. Therefore, NMFS finds good cause to waive the 30-day delay in the date of effectiveness for this rule under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

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 tables contained in this final rule are provided online and serve as the plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2024 and 2025 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2024 and 2025 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. This action directly affects all fishermen who participate in the BSAI fisheries. The specific amounts of OFL, ABC, TAC, and PSC amounts are provided in tables in this final rule to assist the reader. This final rule also contains plain language summaries of the underlying relevant regulations supporting the harvest specifications and the harvest of groundfish in the BSAI that the reader may find helpful.

Information to assist small entities in complying with this final rule is provided online. The OFL, ABC, TAC, and PSC tables are individually available online at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-harvest-specifications.* Explanatory information on the relevant regulations supporting the harvest specifications is found in footnotes to the tables. Harvest specification changes are also available from the same online source, which includes applicable **Federal Register** notices, information bulletins, and other supporting materials. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: March 5, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–05093 Filed 3–8–24; 8:45 am]

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Proposed Rules

Federal Register
Vol. 89, No. 48
Monday, March 11, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–22–0063]

RIN 0581–AE13

National Organic Program; Market Development for Mushrooms and Pet Food

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) proposes to amend the USDA organic regulations to clarify standards for organic mushrooms and organic pet food. Specific standards for these products do not currently exist. Instead, these products have been certified organic using the general organic standards for crops, livestock, and handling. However, this approach is not ideal as the current regulations do not address unique aspects of either product. AMS expects this rule would promote development of these markets by increasing regulatory certainty that would, in turn, encourage investment in the markets. The topics addressed by the proposed rule include sourcing of substrate and spawn in organic mushroom production, composting requirements for organic mushroom production, composition and labeling requirements for organic pet food, and the use of certain synthetic substances in organic pet food.

DATES: Electronic or written comments on the proposed rule must be submitted by May 10, 2024.

ADDRESSES: You may submit electronic comments on this proposed rule through the Federal eRulemaking Portal at *https://www.regulations.gov* (docket number AMS–NOP–22–0063). Instructions for submitting electronic comments are available at *https://www.regulations.gov.* Comments may also be sent by mail to: Erin Healy, Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: All comments should include the docket number (AMS–NOP–22–0063), and/or the Regulatory Information Number (RIN 0581–AE13) for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers, state your position(s), offer any recommended language change(s), and include relevant information and data to support your position(s) (*e.g.,* scientific, environmental, manufacturing, industry, or industry impact information, etc.). All comments and relevant background documents posted to *https://www.regulations.gov* will include any personal information provided.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program. Telephone: 202–720–3252. Email: *Erin.Healy@usda.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose and Need for the Rule

This proposed rule would amend the USDA organic regulations to establish specific standards for organic mushroom production and organic pet food handling. Specific standards are necessary to resolve inconsistency and uncertainty in these two markets. AMS is addressing standards for pet food and mushrooms together in this rule because both markets are currently hampered by the lack of specific regulations that are suitable for these particular products. Both markets exhibit inconsistent interpretations of the organic regulations by certifiers and uncertainty around regulatory requirements that are likely to deter investments in the sectors. In addition, the National Organic Standards Board (NOSB) has made recommendations to revise the regulations for these organic products, and these changes are supported by the organic industry. Finally, both organic mushrooms and pet food are developing markets that would benefit from clearer standards to facilitate and promote growth.

The organic regulations do not currently include standards specific to mushrooms and pet food. Although some mushrooms and pet food products are currently being certified using the general organic standards, the current regulations are an imperfect fit for both mushroom and pet food production and do not address unique aspects of either product. For example, some certifying agents use the current crop production standards to certify organic mushrooms or the handling standards for processed products to certify organic pet food. In both cases, certifying agents and operations extrapolate from the organic standards to fit organic mushroom and pet food production. This creates varying and inconsistent interpretations of the organic regulations, such that some mushroom producers are required to use organic inputs where others are not, and some pet food manufacturers are allowed to use slaughter by-products where others are not. The inconsistent certification and enforcement practices for organic mushrooms and pet food fail to meet one of the purposes of the Organic Food Production Act (OFPA), that is, to assure consumers that organically produced products meet a consistent standard (7 U.S.C. 6501(2)).

Additionally, the National Organic Program (NOP) has received feedback from stakeholders that the lack of specific standards for mushrooms and pet food creates uncertainty that may deter development in these markets. Clearer and more specific standards would give businesses certainty about how they should produce organic mushrooms and pet food, which would create the conditions necessary for the growth of the organic mushroom and pet food markets. Addressing uncertainty and inconsistency in organic mushroom and pet food production is important for market development. Ensuring consistent standards across the organic industry also protects the integrity of the organic seal by building customer trust in the label.

B. Summary of Provisions

Through the amendments in this proposed rule, AMS would establish standards for organic mushroom production and pet food handling. The proposed rule would:

- Add the term ''mushroom'' to the definitions of ''crop'' and ''wild crop;''
- Establish definitions for ''mushroom,'' ''mushroom substrate,'' ''mycelium,'' ''spawn,'' and ''spawn media;''
- Create a new section titled Mushroom Production Practice Standard;
- Require that operations use organic mushroom spawn and substrate when commercially available;
- Add mushroom-specific requirements for organic compost production;
- Establish definitions for ''pet'' and ''pet food'' for the purposes of the USDA organic regulations only;
- Add a new paragraph to the organic handling standard describing the requirements for production and labeling of pet food, including composition (what can be included in organic pet food) and labeling requirements; and
- Add synthetic taurine (an amino acid) to the National List to allow its use in organic pet food.

II. General Information

A. Does this proposed rule apply to me?

You may be affected by this proposed rule if you are engaged in organic mushroom production or pet food handling. Potentially affected entities may include, but are not limited to, the following:

- Organic pet food manufacturers;
- Organic mushroom producers;
- Individuals or business entities that are considering organic certification for pet food or mushrooms;
- Existing livestock, mushroom, and handling operations that are currently certified organic under the USDA organic regulations; and
- USDA-accredited certifying agents, inspectors, and certification review personnel.

This list is not exhaustive but identifies key entities that this rule may affect. Other types of entities may also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the regulatory text and discussion below. If you have questions regarding the applicability of this rule to a particular entity, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for AMS?

AMS seeks comment from the public and organic stakeholders regarding the proposed amendments, especially on the following topics:

1. Is the regulatory language and accompanying discussion in this document clear enough to allow producers, handlers, and certifying agents to comply with the proposed requirements?
2. Do the proposed amendments create any conflict with current organic regulations?
3. Would a one-year implementation period (from the effective date of a final rule) be appropriate for affected operations to comply with these proposed changes? If not, what timeframe would be appropriate?
4. Are there any concerns about the proposed requirements for compost used in organic mushroom operations? Are there any additional health and sanitary issues that AMS has not considered? Would the proposed requirements hinder any current methods of substrate preparation? Would the proposed changes impact other organic sectors and if so, how?
5. Are there any concerns about the proposed requirements for producing certified organic spawn? What are the barriers to producing certified organic spawn for mushroom production? How would this rule affect these barriers?
6. Stakeholders and data indicate that many organically produced mushrooms are sold as conventional mushrooms. Why are certified organic mushroom operations producing significantly more organic mushrooms than they are selling as certified organic? What could be included in this rule to help ensure that mushrooms that are produced organically can be sold as organic?
7. What factors have kept pet food manufacturers from seeking organic certification? Are there barriers that the proposed rule does not address?
8. Are there any additional synthetic, nonsynthetic, or nonorganic substances required in pet food to meet pet health needs that are not included in the proposed rule?
9. Are slaughter by-products commonly used in organic pet food? Are there obstacles to greater use of organic slaughter by-products in organic pet food? Is there existing data on the organic slaughter by-product market utilization and prices?

III. Background

A. Purpose and Need for the Rule

This proposed rule would amend the USDA organic regulations to establish specific standards for organic mushroom production and organic pet food handling. The purpose of these amendments is to resolve uncertainty and inconsistency in how the organic regulations apply to these two products. Based on market penetration data and feedback from stakeholders, AMS believes that removing regulatory uncertainty as a barrier will create conditions that offer a reasonable expectation for growth in these two markets and other latent markets that support them, such as mushroom substrate and organic slaughter by-products.

New rulemaking is needed because the current organic regulations do not include standards specific to mushrooms and pet food. Some certifying agents certify organic mushrooms using the current crop production standards and some certify pet food using a combination of livestock feed standards and handling standards for processed products; however, the current regulations do not address the unique needs of either product. The current crop production standards are intended primarily for plant production and do not fully address the unique biology of mushrooms. This is because mushrooms are fungi, not plants, and have different production practices and materials requirements. Plants are usually grown outdoors and photosynthesize energy from the sun; however, mushrooms are most commonly grown in indoor, controlled environments and draw energy from substrate material. These biological and production differences mean the organic crop production standards do not always fit mushrooms well. Certifier requirements are

currently inconsistent, and producers may be inconsistently applying the organic standards to aspects such as substrate, spawn, and compost for mushroom production.

Similarly, the current organic regulations do not address pet food. Producers and certifiers apply a combination of the handling standards for processed products and the organic livestock feed standards, but their practices are not uniform. The handling standards are appropriate for verifying the processing, handling, product composition, and labeling requirements for multi-ingredient processed agricultural products but lack specific allowances for nutrients that are necessary for pets. The livestock feed standards include allowances for many of those nutrients but include prohibitions on common pet food ingredients, such as slaughter by-products. Slaughter by-products (*e.g.,* animal and poultry by-product meal; animal liver) make up approximately 23 percent of the composition of conventional pet food, in part to meet protein levels required by federal and state regulations on pet food.[1] Applying the livestock feed regulations to organic pet food production inhibits the market for organic slaughter by-products. These contradictions create uncertainty for businesses that currently produce organic pet food and are a barrier to businesses that would like to produce organic pet food or sell slaughter by-products into that market. AMS estimates that this rule could ensure consistent demand for over 14 million pounds of organic meat and organic slaughter by-products annually, with approximately half of that demand being for organic slaughter by-products. Based on feedback from stakeholders, AMS finds it likely that organic meat and slaughter by-product demand will grow over time beyond this estimate after implementation of specific rules.

This rule would also address feedback from the organic industry, which has asked USDA to implement NOSB recommendations more generally, including implementing standards for these two products. AMS hosted a virtual prioritization listening session in spring 2022. Oral and written comments encouraged AMS to prioritize rulemaking for additional practice standards, including organic pet food and mushrooms. The proposed changes in this rule are based on NOSB recommendations for mushroom production and pet food handling in response to the organic industry's interest in further developing the organic standards.

Market penetration data supports the idea that the organic mushroom and organic pet food markets have a reasonable expectation of growth if uncertainty and inconsistency are removed as barriers. Both markets currently lag behind their most-comparable organic sectors. In 2021, sales of organic fruits and vegetables accounted for a 15.5 percent share of all fruit and vegetable sales in the United States,[2] but organic mushrooms only accounted for 10.8 percent of all mushroom sales.[3] Considering that the consumer experience of purchasing mushrooms is typically no different than purchasing fruits and vegetables (they are packaged similarly and found in the same section of the grocery store) it is reasonable to conclude that some external barrier is inhibiting the organic mushroom market. Similarly, organic pet food accounts for only 0.41 percent of all pet food sales, whereas sales of organic non-food products (the closest analog to pet food, as a product that is purchased not for humans to eat) accounted for 1.2 percent of all non-food sales.[4]

In short, AMS believes that clear and consistent standards for organic mushrooms and pet food may create the conditions necessary for organic markets to develop. Regulatory certainty encourages investment in nascent markets; investment increases production capacity; and production enables market growth. Clear standards would promote growth in the development of these markets by increasing consistency in certification and enforcement and removing uncertainty as a regulatory barrier to production and certification. Additionally, growth in these markets is likely to ensure consistent demand for organic inputs in underdeveloped markets like organic meat and slaughter by-products. Because mushrooms and pet food have unique growing conditions and requirements, AMS provides additional discussion of the need for organic standards in each industry in their respective sections below (see ''IV. Mushrooms, B. Need for Organic Mushroom Standard'' and ''V. Pet Food, B. Need for Organic Pet Food Standard'').

B. NOSB Recommendations on Mushrooms and Pet Food

Several times in its history, the NOSB has recognized the unique production needs of organic mushrooms and pet food and recommended standards specific to each market. The Board recommended organic mushroom standards in April 1995 [5] and again in October 2001.[6] Subsequently, the NOSB made a recommendation on organic pet food standards in November 2008,[7] and in April 2013, the NOSB proposed amending the National List to allow taurine for use in pet food.[8] This proposed rule is AMS's first rulemaking action related to these recommendations; we discuss the NOSB's recommendations below.

NOSB Recommendations on Mushroom Production

In 2001, the NOSB recommended:

- Preventing contact between organically produced mushrooms or mushroom growth substrates and prohibited substances;
- Requiring the use of organic spawn when commercially available;
- Requiring organically produced agricultural materials in mushroom substrate; and
- Allowing nonorganic wood products (*e.g.,* sawdust) in mushroom substrate if trees have not been treated with prohibited substances for three years prior to harvest and have not been treated with prohibited substances after harvest.

AMS investigated rulemaking following this recommendation but did not publish a proposed rule.

[1] Institute for Feed Education & Research. (March 2020). ''Pet food production and ingredient analysis.''

[2] Organic Trade Association. (2022). Organic Industry Survey. p. 56. Note that AMS uses the 2021 data available in the Organic Trade Association's 2022 survey because that was the data available while our economic analysis was under development. The 2022 data (released in May 2023), however, also demonstrates lagging market penetration: Mushroom sales lagged the 14.9 percent share that organic fruits and vegetables claimed, and organic pet food accounted for only 0.38 percent of all pet food sales.

[3] USDA, National Agricultural Statistics Service, Agricultural Statistics Board. (August 26, 2022). ''Mushrooms.'' *https://www.nass.usda.gov/Publications/Todays_Reports/reports/mush0822.pdf.*

[4] Organic Trade Association. (2022). Organic Industry Survey. p. 5.

[5] NOSB. (April 24–28, 1995). ''Final minutes of the National Organic Standards Board full board meeting.'' *http://www.dairyprogramhearing.com/getfile32e532e5.pdf?dDocName=STELPRDC5057442.*

[6] USDA, AMS. ''NOSB recommendations: Fall 2011.'' Accessed May 8, 2023. *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/fall2001.*

[7] The NOSB's November 2008 recommendation on organic pet food is available online at: *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/fall2008.*

[8] USDA, NOP. (April 2013). ''The Organic Integrity Quarterly.'' *https://www.ams.usda.gov/sites/default/files/media/NOP%202013%20April%20Newsletter.pdf.*

NOSB Recommendations on Pet Food

In November 2008, the NOSB recommended that organic claims on pet food should be regulated under a combination of organic livestock feed standards and organic processed products labeling requirements.[9] The NOSB recommended:

- Clarifying which animals the pet food requirements would apply to by defining ''pets'' in the regulations;
- Labeling organic pet food using a framework consistent with labeling for organic human food, allowing the ''organic'' claim that requires a minimum of 95 percent organic ingredients and the ''made with organic (specified ingredients or food group(s))'' claim that requires a minimum of 70 percent organic ingredients;
- Clarifying that organic slaughter by-products can be a component of organic pet food; and
- Adding taurine for use in pet food to the National List of allowed synthetic substances.[10]

This proposed rule is the first rulemaking action from AMS to address these recommendations on organic pet food.

C. Community and Stakeholder Feedback

When developing this proposed market development rule, AMS considered industry and stakeholder requests for specific mushroom and pet food standards in addition to the NOSB recommendations. In March 2022, the National Organic Program (NOP) hosted a public listening session to give stakeholders the opportunity to comment on NOP's rulemaking priorities.[11] During the listening session, many stakeholders asked that AMS prioritize rulemaking for products that are currently being certified without standards specific to their unique production categories. This includes mushrooms and pet food. Several stakeholders specifically suggested developing mushroom standards and noted that existing crop standards, including compost requirements, are not appropriate for mushroom production. Similarly, some commenters discussed the importance of establishing consistent pet food standards, naming it as another product currently being certified without standards specific to its unique production demands.

AMS also engaged directly with mushroom experts, producers, and trade associations about organic mushroom production. These discussions affirmed that specific standards for the production and handling of organic mushrooms are needed. These industry stakeholders stated that recognizing mushrooms as a fungal crop cultivated under unique and specialized conditions would foster greater consistency in how organic mushrooms are cultivated and certified. AMS also learned what aspects of mushroom production need mushroom-specific requirements: compost requirements, origin and composition of substrate materials used for growing mushrooms, and origin and composition of spawn.

Discussions with experts in the pet food industry revealed that the key challenge with labeling pet food as organic is uncertainty around the allowance of certain ingredients. For example, under the current organic regulation, it is unclear if pet food manufacturers may use meat (*e.g.,* edible part of animal muscle and organs) or slaughter by-products (*e.g.,* animal and poultry by-product meal; animal liver) in organic pet food, and whether some necessary synthetic ingredients in pet food, such as taurine, are allowed. Inconsistencies in organic claims on pet food can also contribute to consumer uncertainty or mistrust of organic labels. Additionally, stakeholders have noted that allowing organic slaughter by-products in organic pet food would allow livestock producers and slaughter facilities to earn organic premiums for these organic slaughter by-products, which would otherwise be sold without a premium for use in nonorganic products. AMS estimates that this rule could ensure consistent demand for over 7 million pounds of organic slaughter by-products annually, which is likely to grow over time.[12]

Overall, this rulemaking incorporates several NOSB recommendations and stakeholder feedback to address the need for specific standards for mushrooms and pet food. Adding these specific standards is expected to support the development of organic markets for these industries by reducing uncertainty among certifiers, consumers, producers, and manufacturers.

D. Authority

The Organic Foods Production Act of 1990 (OFPA)[13] authorizes the USDA to promulgate regulations to establish an organic certification program for producers and handlers of agricultural products (7 U.S.C. 6503(a)). This proposed rule would establish new production and certification standards for two products that currently lack specific standards. This proposed rule would, in turn, support the three purposes of OFPA: ''(1) to establish national standards governing . . . organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in . . . food that is organically produced'' (7 U.S.C. 6501). The proposed rule would clarify how producers and certifiers should interpret existing organic regulations as they pertain to mushroom or pet food production, which would assure consumers that the organic label on these products guarantees a consistent standard. The proposed rule would assure producers that they operate in a fair and competitive environment with clear rules that all must follow.

USDA administers organic standards through the Agricultural Marketing Service (AMS) National Organic Program (NOP). Final regulations establishing the NOP and the USDA organic regulations were published on December 21, 2000 (65 FR 80548)[14] and were first implemented on October 21,

[9] NOSB. (November 19, 2008). ''Formal recommendation by the National Organic Standards Board (NOSB) to the National Organic Program (NOP).'' *https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Pet%20Food.pdf.*

[10] The 2008 recommendation listed taurine and other additives as ''materials for possible petition to the National List for use in Pet Food.'' In 2013, the NOSB passed a motion to specifically recommend listing taurine ''as a feed additive for use in pet food, only.'' See NOSB. (April 11, 2013). ''Formal recommendation from: National Organic Standards Board (NOSB) to: the National Organic Program (NOP).'' *https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Pet%20Food%20Amino%20Acid%20amended.pdf.*

[11] USDA, NOP. (March 21, 2022). ''National Organic Program priorities listening session.'' *https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session.*

[12] Data from the Institute for Feed Education & Research indicates that approximately 23 percent of the ingredient weight in conventional pet food is animal by-product and meal. This estimate is then applied to the estimate pounds of organic pet food as reported by the Organic Trade Association and current market prices. Institute for Feed Education & Research. (March 2020). ''Pet food production and ingredient analysis.'' Organic Trade Association. (2022). Organic Industry Survey. p. 56.

[13] The Organic Foods Production Act of 1990, 7 U.S.C. 6501–6524, is the statute from which the Agricultural Marketing Service derives authority to administer the NOP, and authority to amend the regulations as described in this proposed rule. This document is available at: *https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter94&edition=prelim.*

[14] USDA, AMS. (December 21, 2000). ''National Organic Program.'' Final Rule. 65 FR 80548 (codified at 7 CFR part 205). *https://www.federalregister.gov/documents/2000/12/21/00-32257/national-organic-program.*

2002.[15] Through these regulations, AMS oversees national standards for the production, handling, labeling, and sale of organically produced agricultural products.

IV. Organic Mushroom Standard

A. Mushroom Background

Mushroom Biology and Production

Mushrooms are the fleshy, spore-bearing, fruiting body of some species of fungus. Mushrooms grow from mycelium, which grows below the surface as a root-like network of cells. Commercial mushrooms are grown from spawn, a combination of mycelium and a media (like grains or minerals to carry the mycelium), in controlled indoor environments. In commercial mushroom production, spawn is introduced onto mushroom substrate to grow mushrooms, comparable to how seeds are planted to grow crops.

The mushroom lifecycle is a circular phenomenon that cultivators seek to mimic. In this cycle, spores germinate and then produce hyphae that form mycelium. Mycelium grows by consuming nearby organic material in the cropping container substrate. Fruiting (*i.e.,* formation of mushrooms) occurs when particular conditions are met, such as when the mycelium is well developed, and the humidity and temperature conditions are favorable. The fruiting bodies (*i.e.,* the mushrooms) then create more spores to continue the cycle.

Mushroom growers use spawn—a small amount of material with mycelium growing on it—to produce mushrooms. Spawn can be compared to plant seeds in an agricultural setting; however, an important distinction is that spawn lacks the energy storage of a seed. Seeds store energy to use during germination, whereas spawn must draw energy from substrate materials such as compost. Because of this dependence on the production substrate and the fact that spawn consumes the substrate, the materials used in it are an important part of the composition and growth of the mushrooms.

Mushroom substrate is generally made of composted and/or uncomposted materials, depending on the species of mushroom, and may contain grain, wood, vermiculite, or other ingredients. In mushroom production, inoculation refers to the introduction of spawn to mushroom substrate. Inoculation methods vary depending on the species of mushroom and the mushroom substrate material it grows on. Mycelium grows within the production substrate after it is inoculated, ultimately producing mushrooms. Depending on the type of mushroom, producers may sometimes harvest multiple crops of mushrooms from one batch of inoculated substrate. Once the production cycle is complete and mushrooms are harvested, a new batch of inoculated mushroom substrate is generally needed to produce a new batch of mushrooms.

The U.S. Mushroom Market

For the 2021–2022 growing season, the U.S. mushroom crop volume was 702 million pounds with sales of $1.02 billion.[16] The *Agaricus bisporus* species of mushrooms accounted for approximately 97 percent of the total sales volume and approximately 93 percent of the total value.[17] *Agaricus* includes white mushrooms (including common, button, and champignon varieties, among others) and brown mushrooms (including crimini/cremini, Swiss, Roman, Italian, and Portobello/Portabello/Portabella varieties, among others). Outside of the *Agaricus* varieties, there are a multitude of cultivated ''specialty'' mushrooms including shiitake, oyster, enoki, maitake, pompom, and others. Some of these specialty mushrooms include foraged (wild) mushrooms and specialty mushrooms that are intentionally cultivated outdoors. In 2021, 10.8 percent of all mushrooms produced were sold as organic, compared to 15.5 percent of all fruits and vegetables.[18] [19] *Agaricus* mushrooms accounted for approximately 82 percent of the total production volume of organic mushrooms; the remainder were specialty mushrooms.[20]

B. Need for Organic Mushroom Standard

This proposed rule would create specific standards for organic mushroom production to promote consistency, fair competition, and market growth. As of June 2023, at least 39 certifying agents certify 272 organic mushroom operations.[21] However, the lack of mushroom-specific standards means there is significant variation in how these operations are certified. About 75 percent of certifying agents that oversee organic mushroom production use the organic regulations' crop standards to certify mushrooms, and the remaining 25 percent either follow the NOSB's recommendations on mushrooms, or other standards such as those of the European Union. More specifically, some certifying agents require mushroom substrate to be organic, and some do not. Likewise, some certifying agents require spawn to be organic, and some do not.

A key challenge is that the organic crop standards are designed for terrestrial plants, while mushrooms are the fruiting bodies of fungi—a different kingdom of organisms. Fungi require different growing conditions than plants. Mushrooms are grown from spawn, not seed. Generally, mushrooms are not grown in soil like plants; they are grown in substrate material made of composted plant material, minerals, sawdust, and/or logs. Finally, mushrooms do not photosynthesize like plants; they absorb compounds from their environment to use as sources of energy.

The current organic regulations do not address the unique biological differences noted above. Specifically, the regulations lack detail and requirements for spawn, substrate, and compost used in organic production. Consequently, certifying agents have developed their own policies about spawn, substrate, and compost in mushroom production, leading to variation in how organic mushrooms are certified and creating confusion around what practices operations should use. The absence of consistent standards also creates an uneven playing field and encourages ''certifier shopping''—as operations learn about discrepancies,

[15] USDA, AMS. (March 20, 2001). ''National Organic Program; Correction of the effective date under Congressional Review Act (CRA).'' Final Rule. 66 FR 15619. *https://www.federalregister.gov/documents/2001/03/20/01-6836/national-organic-program-correction-of-the-effective-date-under-congressional-review-act-cra.*

[16] USDA, National Agricultural Statistics Service, Agricultural Statistics Board. (August 26, 2022). ''Mushrooms.'' *https://www.nass.usda.gov/Publications/Todays_Reports/reports/mush0822.pdf.*

[17] USDA, National Agricultural Statistics Service, Agricultural Statistics Board. (August 26, 2022). ''Mushrooms.'' . *https://www.nass.usda.gov/Publications/Todays_Reports/reports/mush0822.pdf.*

[18] Organic Trade Association. 2022 Organic Industry Survey. p. 56. *https://ota.com/market-analysis/organic-industry-survey/organic-industry-survey.*

[19] USDA, National Agricultural Statistics Service, Agricultural Statistics Board. (August 26, 2022). ''Mushrooms.'' *https://www.nass.usda.gov/Publications/Todays_Reports/reports/mush0822.pdf.*

[20] USDA, National Agricultural Statistics Service, Agricultural Statistics Board. (August 26, 2022). ''Mushrooms.'' *https://www.nass.usda.gov/Publications/Todays_Reports/reports/mush0822.pdf.*

[21] USDA, Organic Integrity Database. *https://organic.ams.usda.gov/Integrity/Home.* Advanced search features can be accessed at *https://organic.ams.usda.gov/Integrity/Search.* Certified mushroom producers may be found by narrowing a certified product search for ''mushrooms'' to operations with a certification status of ''certified'' and limiting results to the ''Crops'' scope. Output was manually cleaned to remove unrelated entries.

they may pressure their certifier to change their interpretation of the standards or switch to another certifier.

Unfair competition caused by different interpretations of the organic mushroom standards, as well as the possibility of future regulatory changes, could reduce the willingness of businesses to invest in this sector. AMS aims to address these problems by developing one clear standard for organic mushroom production. Certifying agents would have clear rules to follow and competition among operations would be fairer. This would give businesses greater confidence in the stability of the industry and would encourage them to invest in organic mushroom growing operations and organic mushroom inputs.

C. Overview of Proposed Amendments

This proposed rule would amend the USDA organic regulations (7 CFR part 205) by adding new provisions for producing mushrooms that are sold, labeled, or represented as organic. This action would prescribe consistent standards for producers of organic mushrooms, as detailed below.

TABLE 1—OVERVIEW OF PROPOSED REGULATORY CHANGES TO ESTABLISH ORGANIC MUSHROOM PRODUCTION STANDARD

Section title	Type of action	Proposed action
205.2	Adds new terms	Mushroom; Mushroom substrate; Mycelium; Spawn; Spawn media.
205.2	Amends existing terms	Compost; Crop; Wild crop.
205.210	Adds new section	Adds mushroom-specific standards to Subpart C.
205.601	Amends language at (i)–(j)	Replaces the term ''plant'' with the term ''crop''.

Sec. 205.2 (Terms Defined)

AMS proposes to amend § 205.2 by adding five new terms (''mushroom,'' ''mushroom substrate,'' ''mycelium,'' ''spawn media,'' and ''spawn'') and revising three existing terms (''compost,'' ''crop,'' and ''wild crop''), as described below.

1. Mushroom

AMS proposes to define ''mushroom'' as the fruiting body of a fungus. The term ''mushroom'' is primarily used to describe the agricultural product that consumers purchase.

2. Mushroom Substrate

AMS proposes to define ''mushroom substrate'' as the base material from which mushrooms are cultivated or grown. This substrate acts as a media for fungus to grow on to produce mushrooms and provides the energy and nutrients required for mushrooms to grow. This substrate may be composed of composted material, uncomposted materials, or both, as described under § 205.210(c).

3. Mycelium

AMS proposes to define ''mycelium'' as a mass of branching, thread-like hyphae (fungal structures). Mycelium is the main body portion of a fungus from which mushrooms grow. In commercial mushroom production, mycelium is also used to colonize or inoculate spawn media to produce spawn and a subsequent crop of mushrooms.

4. Spawn Media

AMS proposes to define ''spawn media'' as a carrier, such as grains or minerals, that, when colonized with fungal mycelium, creates spawn. Spawn media, once combined with mycelium, is defined separately as ''spawn.'' Grain, sawdust, and vermiculite are common ingredients in spawn media.

5. Spawn

AMS proposes to define ''spawn'' as spawn media that has been colonized by fungal mycelium, which is used to inoculate mushroom substrate (*i.e.,* mushrooms are not harvested from spawn). Spawn, a combination of mycelium and spawn media, is used to inoculate mushroom substrate. Mushrooms grow from mushroom substrate after spawn is applied to (and inoculates) the mushroom substrate.

6. Compost

AMS proposes to simplify the definition of ''compost'' so that the definition would cover compost for use in mushroom production. The current definition of ''compost'' includes compost production requirements (*e.g.,* minimum time and temperature) that are specific to plant production. However, compost for mushroom production is typically made using lower temperatures and shorter timeframes. The current definition of compost, with its plant production-specific details, is therefore not ideal for producers who need to create or use compost for mushroom production.

This rulemaking proposes to remove the plant production-specific composting requirements from the current definition of compost and add ''or substrate'' to the end of the definition. This leaves a general definition that allows the production of compost that meets the specific needs of either plants or mushrooms: the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil or substrate. Plant production-specific composting requirements remain in the regulation at § 205.203(c)(2)—Soil fertility and crop nutrient management practice standard. This rule also adds mushroom-specific composting requirements, as described below in the section titled Mushroom production practice standard (§ 205.210).

7. Crop and Wild Crop

AMS proposes to amend the terms ''crop'' and ''wild crop'' to include mushrooms. AMS proposes to include mushrooms in these definitions to clarify that operations may use certain crop production standards in subpart C to produce mushrooms.

Sec. 205.210 (Mushroom Production Practice Standard)

AMS proposes to add a new section (§ 205.210) to the USDA organic regulations to describe production practice standards for organic mushrooms. Many of the existing production requirements in subpart C can be applied to mushroom production. However, because of their unique biology, mushroom production demands certain practices that are different from plant production. This new section clarifies which of the existing crop production requirements a mushroom producer should use and adds several mushroom-specific requirements.

AMS proposes in § 205.210(a) that mushroom operations must manage their operations following most of the existing regulations governing crop production, including §§ 205.200, 205.201, 205.202 as applicable, 205.206(a)(2) and (3), and 205.206(b) through (f). These sections cover general production requirements (§ 205.200); organic production and handling system plans (§ 205.201); land requirements

(§ 205.202); and crop pest, weed, and disease management (§ 205.206). Organic mushroom operations, like all other organic operations, must have an organic system plan that describes how the operation complies with applicable parts of the USDA organic regulations.

Because mushrooms have unique biology and production needs, not all existing crop production requirements apply to organic mushroom production. This means that mushroom operations do not need to follow all the requirements in the soil fertility and crop nutrient management practice standard at § 205.203, the seeds and planting stock practice standard at § 205.204, or the crop rotation practice standard at § 205.205. Unlike plants, which acquire energy from photosynthesis, mushrooms absorb sources of energy (like sugars and other organic compounds) from their surroundings. Therefore, most of the soil fertility and nutrient management practices in § 205.203 are not appropriate for mushroom production. However, mushroom producers would have to follow the same nutrient management requirements as plant producers described in § 205.203(d)(1) through (5) and (e). These paragraphs describe acceptable and prohibited forms of nutrient management.

Similarly, mushroom production does not involve seeds or planting stock, and mushrooms are not grown in rotations for fertility or disease suppression, so §§ 205.204–205.205 are not appropriate for mushroom production.

Proposed paragraph 205.210(b) would require operations to manage mushroom substrates and spawn media in a way that avoids environmental contamination. AMS proposes that mushroom substrates, spawn media, spent mushroom substrates, and spent spawn media must be managed to avoid the contamination of any mushrooms, spawn, substrate, soil, or water by pathogenic organisms, heavy metals, or residues of prohibited substances. This provision aligns with the requirement in § 205.203(c), which requires operations to prevent environmental contamination from materials applied to soil. Likewise, this proposed requirement also aligns with the requirement in § 205.200 to protect natural resources. Section 205.210(b) would require operations to handle materials in a way that avoids contamination throughout the entire mushroom production process, from spawn creation, to growing mushrooms, to disposal of spent substrate.

Operations that only produce organic spawn and do not produce organic mushrooms would also be subject to the provisions in paragraph (b). Spawn media is usually incorporated into the substrate when spawn is applied to a mushroom production bed. In cases where a spawn producer decides not to use a batch of spawn and disposes of the spawn, the operations would need to dispose of spent spawn media in a manner that avoids contamination of mushrooms, spawn, substrate, soil or water by pathogenic organisms, heavy metals, or residues of prohibited substances.

In § 205.210(c), AMS proposes requirements for what mushroom substrate and spawn media can be made of and what materials may be used in substrate production. This proposed paragraph is divided into subparagraphs to address the acceptable use of four types of materials: composted plant and animal materials, uncomposted plant materials, non-agricultural natural substances, and synthetic substances.

Proposed paragraph (c)(1) describes requirements for composted plant and animal materials for use in mushroom substrate and spawn media. This section details time, temperature, and composition requirements for composting plant and animal materials for use in mushroom production. The proposed rule would require that compost feedstock reach at least 131 °F for at least three days during the composting process. The compost must not be treated with any prohibited substances per the existing requirements at § 205.203(e)(1). AMS does not propose a maximum temperature for mushroom compost production. The proposed mushroom compost requirements are consistent with industry standards. The proposed minimum temperature requirement would allow mushroom producers the flexibility to compost their feedstock at higher temperatures for a longer period if warranted.

AMS proposes in § 205.210(c)(2) that uncomposted plant materials for use in mushroom substrate and spawn media must be organically produced if commercially available. However, nonorganically produced uncomposted plant materials may be used in mushroom production when an equivalent organically produced variety is not commercially available. In this case, prohibited substances may not be applied to the nonorganically produced uncomposted plant materials after harvest. Certifiers must use the definition of commercial availability in § 205.2 to validate an operation's claim that organically produced plant materials necessary for mushroom production are not commercially available.

Paragraphs (c)(3) and (4), together with the proposed amendment to the definition of ''crop'' in § 205.2 to include mushrooms, would allow mushroom operations to use natural (nonsynthetic) substances and/or synthetic substances in accordance with the National List of Allowed and Prohibited Substances for organic crop production. These provisions are appropriate for crop operations and are consistent with the framework in § 205.105(a) and (b) regarding allowed and prohibited substances in organic production. Paragraph (c)(3) would allow the use of natural (nonsynthetic) substances in mushroom substrate and spawn media. Examples include mined gypsum, chalk, and clay. However, operations must not use nonsynthetic substances prohibited for use in organic production in § 205.602 of the National List. Paragraph (c)(4) would also permit the use of synthetic substances allowed for use in organic crop production listed at § 205.601 of the National List. Examples include sanitizers, including chlorine products (like sodium hypochlorite) and hydrogen peroxide; micronutrients listed at § 205.601(j)(7); and microcrystalline cheesewax (which is on the National List at § 205.601(o)(1) and annotated for use as a production aid exclusively in log-grown mushrooms). Use of these substances in mushroom substrate and spawn media must also follow all applicable substance-specific restrictions included in the National List. Paragraph (c)(4), along with the proposed revision to the definition of ''crop'' in § 205.2 to include mushrooms, would enable mushroom operations to select from the already familiar list of substances allowed in crop production.

AMS proposes in § 205.210(d) that spawn used in organic mushroom production must be organic. Organic spawn must (1) use organic agricultural products (*e.g.,* organic grain) in the spawn media and (2) the spawn must be under continuous organic management once mycelium is applied to the organic spawn media. However, if organic spawn is not commercially available, an operation may use nonorganic spawn to produce a crop of organic mushrooms. Certifiers must use the definition of commercial availability in § 205.2 to validate an operation's claim that organic spawn is not commercially available.

Sec. 205.601 (National List)

Finally, AMS proposes to update § 205.601 to clarify that mushrooms are within the scope of organic crop production. The current regulations at § 205.601(i) and (j) use the phrases ''As

plant disease control'' and ''As plant or soil amendments'' to describe types of synthetic substances, grouped by function, that may be used in organic crop production. AMS proposes to replace the term ''plant'' with ''crop'' in these phrases. Because AMS is proposing to revise the definition of crop (§ 205.2) to include mushrooms, the proposed changes would allow the use of the materials on the National List in paragraphs (i) and (j) in mushroom production. This is discussed in additional detail above (see § 205.210(c)(3) and (4)). AMS notes that certifying agents who currently apply the crop production standards to mushroom production currently permit these substances in mushroom production.

V. Organic Pet Food Standard

A. Pet Food Background

AMS proposes in this rule to regulate organic claims on pet food using the existing regulatory framework for processed organic products (§ 205.270, Organic handling requirements) to clarify the composition and labeling requirements for organic pet food. These amendments would allow organic pet food to be labeled and sold as ''100% organic,'' ''organic,'' or ''made with organic (specified ingredients or food group(s)).'' The proposed changes would clarify that pet food is distinct from livestock feed, which has its own composition and labeling requirements (see §§ 205.237 and 205.301(e)). This proposed rule defines ''pet'' as ''Any domestic animal not used for the production and sale of food, fiber, or other agricultural-based consumer products.'' The rule defines ''pet food'' as ''Any commercial feed prepared and distributed for pet consumption.'' Throughout this proposed rule, the term ''pet food'' is used to refer to all pet foods, including food for pets other than dogs and cats, unless otherwise noted. Feed for zoo animals (such as large cats) falls outside the scope of the proposed definitions for pet food, since zoo animals fall outside the definition of ''pet''—they are not domestic animals.

This rule proposes to regulate only the organic claims of organic pet food: specifically, what it can contain and how it must be labeled. Other aspects of the manufacture, marketing, and sale of pet food—including its healthfulness and safety, nutritional value and composition, and suitability for pets—fall under the Food and Drug Administration's (FDA) authority. All pet food manufacturers, organic or otherwise, must comply with relevant federal and state regulations pertaining to pet food safety. The framework for pet food regulation, summarized below, provides context for several provisions in the proposed organic pet food standards.

Pet Food Regulations

Pet food labels are regulated at the federal and state levels. At the federal level, the FDA is responsible for overseeing and enacting the requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which requires that pet food be safe, properly manufactured, and adequately labeled.[22] The FDA requires certain information on all animal feed labels: proper identification of the product, net quantity statement, name and place of manufacturer or distributor, and a proper listing of all ingredients.[23] Some states enforce their own labeling regulations in addition to those administered by FDA. Most of these states follow the recommendations of the Association of American Feed Control Officials (AAFCO), an independent trade organization. They require a product name that complies with AAFCO pet food labeling rules, the species of pet for which the product is intended, a guaranteed analysis showing the basic nutrient composition, and in some cases a statement of nutritional adequacy and feeding directions.[24]

Pet food is often formulated as a complete nutrition product—*i.e.,* the sole source of nourishment for pets. It typically contains ingredients from agricultural sources and supplemental nutrients to meet the nutrient requirements of the animal. These ingredients (including supplemental nutrients) do not require FDA's pre-market approval if they are on an FDA-maintained list of ingredients Generally Recognized As Safe (GRAS).[25] The National Academy of Sciences' National Research Council (NRC) and AAFCO provide information on the nutrient requirements of dogs and cats at each stage of life (*e.g.,* growth, reproduction, adult maintenance) to guide the formulation of nutritionally adequate pet foods. The NRC has listed and described essential nutrients in its 2006 publication, ''Nutrient Requirements of Dogs and Cats.'' [26] AAFCO maintains on its website more recently updated Nutrient Profiles for the various stages of life. The minimum nutrient levels specified in the AAFCO Nutrient Profiles are generally consistent with NRC Nutrient Requirement tables and are updated periodically as NRC recommendations change.

This proposed rule would not supersede the requirements of the FDA or state regulatory bodies, including nutrient requirements established according to the guidance of NRC or AAFCO. Instead, this rule is intended to work jointly with those requirements and more narrowly regulate what manufacturers must do to label their pet food ''organic'' or claim it is ''made with organic (specified ingredients or food group(s)).'' Additionally, by including organic pet food in the organic regulations, the proposed rule would clarify the process for adding substances to the National List specifically for use in organic pet food. Future amendments to the National List could be made, as necessary, in accordance with the process, requirements, and criteria described in OFPA (see 7 U.S.C. 6517 and 6518).

Organic Pet Food Industry and Market

The U.S. pet food market is a large and growing market in the United States. According to recent data from the American Pet Products Association (APPA), 66 percent of U.S. households own a pet, which is around roughly 86.9 million homes.[27] In 2022, the pet food market in the United States was valued at $58.1 billion and is projected to increase to $62.7 billion in 2023. While the conventional pet food market is already substantial, the organic pet food market is relatively new, with few organic brands able to penetrate the market. In 2022, the organic pet food market was valued at $129 million but had substantial growth of 5.3 percent over 2021, which was the highest recorded growth since 2013.[28] As of 2021, the organic pet food market is still less than one percent of the total pet

[22] FDA. (February 17, 2022). ''FDA's regulation of pet food.'' *https://www.fda.gov/animal-veterinary/animal-health-literacy/fdas-regulation-pet-food.*

[23] FDA. (February 3, 2023). ''Pet food.'' *https://www.fda.gov/animal-veterinary/animal-food-feeds/pet-food.* FDA's animal food labeling regulations are located at 21 CFR part 501.

[24] AAFCO. ''Labeling & labeling requirements.'' Accessed May 1, 2023. *https://www.aafco.org/resources/startups/labeling-labeling-requirements/.*

[25] FDA. (August 4, 2023). ''Current animal GRAS notices inventory.'' *https://www.fda.gov/animal-veterinary/generally-recognized-safe-gras-notification-program/current-animal-food-gras-notices-inventory.*

[26] NRC. (2006). ''Nutrient requirements of dogs and cats.'' *https://nap.nationalacademies.org/catalog/10668/nutrient-requirements-of-dogs-and-cats.*

[27] American Pet Products Association. ''Pet industry market size, trends & ownership statistics.'' Retrieved May 5, 2023. *https://www.americanpetproducts.org/press_industrytrends.asp.*

[28] Organic Trade Association. 2022 Organic Industry Survey. p. 108. *https://ota.com/market-analysis/organic-industry-survey/organic-industry-survey.*

food market,[29] and AMS believes there is potential for further growth.

AMS expects that as the number of organic options for pets increases, an untapped market of organic consumers may seek out and purchase organic pet food for the same reasons that they purchase other organic foods. Additionally, demand for pet food was driven up by the COVID–19 pandemic when many people chose to adopt pets while living and working from home. According to an American Society for the Prevention of Cruelty to Animals (ASPCA) survey, around 23 million homes (nearly one in five homes in the United States) adopted a cat or dog during the pandemic.[30]

Most dry and wet pet foods are multi-ingredient products because multiple ingredients are needed to meet the nutritional needs of a pet. The multi-ingredient nature of most pet foods creates a challenge for manufacturers—the organic regulations describe requirements for processed human food, but it is not clear if pet food should follow the same rules. In addition, there is uncertainty about which ingredients are allowed and how certain ingredients can be used in organic pet food. An example is synthetic taurine, which is a necessary ingredient in some pet food, but is not on the National List for use in organic pet food. This limits the types of pet food that can be certified as organic to single-ingredient pet food and treats, in turn limiting the size of the organic pet food market overall. Revising the organic regulations to clearly state how pet food can be labeled organic would allow companies to produce multi-ingredient dry and wet food products that are certified organic and still meet the complete nutritional needs of pets. Additionally, under the current organic regulations, it is unclear if pet food manufacturers may use meat or slaughter by-products in organic pet food, which likely limits the production of organic pet food. AMS expects that these changes would encourage additional growth in the small organic pet food market and other latent organic markets that support it, such as organic slaughter by-products.

B. Need for Organic Pet Food Standard

The lack of specific standards for organic pet food creates inconsistency and uncertainty around labeling and composition requirements for organic pet food. These regulatory gaps increase the risk for businesses in the organic pet food market, hinder production innovation, and limit the market for organic slaughter by-products.

For example, some certifying agents have used the composition requirements for organic livestock feed (§ 205.301(e)) to certify pet food as organic, but livestock feed produced under the organic standards may not sufficiently address pets' nutrient needs. Specifically, the organic livestock feed composition requirements (§ 205.301(e)(2)) state that livestock feed must be produced ''in conformance with § 205.237.'' Section 205.237(a) requires that all agricultural ingredients be organically produced and handled, and § 205.237(b)(5) prohibits feeding slaughter by-products to mammals or poultry; however, slaughter by-products are a commonly used protein source in pet food. Furthermore, although the organic livestock feed standards allow the use of vitamins and minerals (§ 205.603(d)), the composition requirements for livestock feed do not allow certain synthetic amino acids that are commonly used in pet food, such as taurine. In some cases, certifying agents may not adhere strictly to the livestock feed standards and some may allow organic slaughter by-products while others do not. This type of inconsistency creates uncertainty for companies considering entering the market. It also reduces the organic premiums that livestock producers and slaughterhouses could otherwise gain.

While some certifying agents have used the composition requirements for organic livestock feed (§ 205.301(e)) to certify pet food as organic, others have used only the handling standards in § 205.270 to certify pet foods as organic. These standards allow organic ingredients (*e.g.,* organic slaughter by-products) and allow nonorganic ingredients that appear on the National List at §§ 205.605 and 205.606, but the standards do not explicitly allow the vitamin and mineral ingredients that appear on the National List for livestock production at § 205.603(d).

This proposed rule would resolve these problems by, first, establishing that pet food is not to be regulated as organic livestock feed and thereby allowing organic slaughter by-products in organic pet food. Allowing slaughter by-products in organic pet food would also increase demand for certified organic slaughter by-products and create new income streams for organic livestock producers and slaughterhouses. Second, the proposed rule would clarify that vitamins, minerals, and taurine are allowed ingredients in organic pet food. Third, the rule would clarify that certain nonorganic content is permitted in pet food, in accordance with the labeling categories at § 205.301(a) through (d).

The product that forms the largest share of the entire pet food market—kibble [31] or dry ''complete and balanced'' [32] pet food intended to supply a pet's daily nutritional needs—is a processed product, but the current handling regulations do not allow additive nutrients and vitamins (such as taurine) that pets need to meet nutritional requirements. The proposed rule would resolve this problem by explicitly allowing the vitamin and mineral feed additives referenced in §§ 205.603(d)(2) and (3) for use in pet food and by adding taurine to the National List in § 205.605(b) as an allowed substance in pet food. The natural form of taurine, which is present in raw meat, is lost when heated—a step in the processing of many pet food products.[33] Because of this, synthetic forms of taurine are often added to certain pet foods. By adding synthetic taurine to the National List for use in organic pet food only, this proposed rule would provide for the use of taurine in organic pet food.

Additionally, this proposed rule would regulate pet food under the composition and labeling requirements for processed products referenced in § 205.270. This would allow producers to use both the ''organic'' and ''made with organic (specified ingredient or food group(s))'' labeling claims on multi-ingredient products that contain some nonorganic content. These two labeling claims are regulated under the USDA organic regulations (§§ 205.301, 205.303, and 205.304) and are used extensively by certified organic handlers. ''Organic'' products must contain at least 95 percent organic ingredients, while ''made with organic'' products must contain at least 70 percent organic ingredients. In both cases, any nonorganic ingredient(s) must also meet specific criteria.[34] This

[29] Organic Trade Association. 2022 Organic Industry Survey. p. 108.

[30] ASPCA. ''New ASPCA survey: Vast majority of dogs and cats acquired during pandemic still in their homes.'' Retrieved May 5, 2023. *https://www.aspcapro.org/resource/new-aspca-survey-vast-majority-dogs-and-cats-acquired-during-pandemic-still-their-homes.*

[31] Kibble was 62.8 percent of all pet food sales in 2020. Pet Food Processing. (December 1, 2020). ''State of the US pet food and treat industry, 2020.'' *https://www.petfoodprocessing.net/articles/14294-state-of-the-us-pet-food-and-treat-industry-2020.*

[32] FDA. (February 28, 2020). ''Complete and Balanced Pet Food.'' *https://www.fda.gov/animal-veterinary/animal-health-literacy/complete-and-balanced-pet-food.*

[33] Spitze, A.R., Wong, D.L., Rogers, Q.R., & Fascetti, A.J. (2003). ''Taurine concentrations in animal feed ingredients; cooking influences taurine content.'' Journal of Animal Physiology and Animal Nutrition, 87(7–8), 251–262.

[34] USDA, AMS. (April 2018). ''Organic Labels Explained.'' *https://www.ams.usda.gov/sites/default/files/media/OrganicLabelsExplained.png.*

proposed rule would provide pet food manufacturers flexibility to use organic ingredients in a ''made with organic'' pet food product without having to reach the higher 95 percent ingredient threshold for ''organic'' products. This clarification would allow pet food companies to increase organic content in their product line.

Finally, under the current organic regulations, it is unclear if pet food manufacturers may use meat or slaughter by-products in organic pet food, limiting the production of pet food and demand for organic slaughter by-products based on certifier interpretation. AMS estimates that by clarifying slaughter by-products are allowed, this rule will allow for more flexible and affordable organic pet food options and could ensure consistent demand for over 7 million pounds of organic by-products annually.[35] Based on feedback from stakeholders, AMS finds it likely that this clarification will also increase growth in these markets.

In conclusion, this rule would address inconsistencies in how certifying agents are applying the current organic regulations to pet food. It would also resolve regulatory uncertainties that artificially increase risk in the organic pet food market. Addressing these inconsistencies and uncertainties would create the conditions necessary for the organic pet food and related markets to grow.

C. Overview of Proposed Amendments

This proposed rule would amend the USDA organic regulations (7 CFR part 205) by defining ''pet'' and ''pet food'' in the regulations and adding a new paragraph for pet food in § 205.270, organic handling requirements. This action would integrate organic pet food standards into existing USDA organic labeling categories for agricultural products (subpart D of part 205) and specify the ingredients that can be included in pet food labeled ''organic'' or ''made with organic (specified ingredients or food group(s)).'' Table 2 provides a summary of the proposed amendments to the USDA organic regulations to incorporate pet food composition and labeling standards.

TABLE 2—OVERVIEW OF PROPOSED REGULATORY CHANGES TO ESTABLISH PET FOOD STANDARDS

Section title	Type of action	Summary of proposed action
205.2	Adds new terms	Defines terms ''pet'' and ''pet food''.
205.270	Adds new paragraph	Adds composition and labeling requirements specific to pet food.
205.605(b)	Adds substance to the National List.	Adds taurine to the National List as an allowed ingredient in pet food.

Sec. 205.2 (Terms Defined)

AMS is proposing to amend § 205.2 by adding two new terms, ''pet'' and ''pet food.''

1. Pet

AMS is proposing to define ''pet'' as ''any domestic animal not used for the production and sale of food, fiber, or other agricultural-based consumer products.'' This term establishes a distinction between animals raised as pets and animals raised for food or fiber (*i.e.,* ''livestock,'' as defined at § 205.2). Animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products are ''livestock'' under the USDA organic regulations (§ 205.2) and must be produced under all applicable organic livestock requirements. Feed requirements for organic livestock are described at § 205.237 and would not apply to organic pet food, and vice versa.

By creating a regulatory distinction between pets and other animals whose feed is subject to organic regulation, the proposed rule would allow organic pet food to contain organic slaughter by-products (except when prohibited by Federal or State laws and regulations, see proposed § 205.270(c)). This distinction is significant for pet food production because current regulations do not allow slaughter by-products in livestock feed (§ 205.237(b)(5)), but slaughter by-products are commonly used as a protein source in pet food. Additionally, organic livestock must consume only organic agricultural products (§ 205.237(a)), whereas the proposed rule would allow nonorganic agricultural ingredients to be used in pet food under the same labeling categories as other processed organic foods. Together, these clarifications are expected to increase the types of usable ingredients in organic pet food production and increase the commercial viability of organic pet food.

2. Pet Food

AMS is proposing to define ''pet food'' as ''any commercial feed prepared and distributed for pet consumption.'' The proposed definition for ''pet food'' distinguishes organic pet food products from organic livestock feed products. This action is consistent with the NOSB recommendation.[36] It also addresses a concern expressed by pet food manufacturers that applying the livestock feed composition requirements to pet food could limit product formulation and participation in the organic market because of the lack of available organic protein sources, particularly rendered products such as poultry meal. Unless otherwise noted, the term ''pet food'' refers to all pet foods, including food for pets other than dogs and cats. Feed for zoo animals (such as large cats) is not included in the proposed definition, as zoo animals are not domestic animals and therefore fall outside the definition of ''pets.''

Sec. 205.270 (Organic Handling Requirements)

This proposed rule would add a new paragraph (c) to § 205.270—Organic handling requirements—to describe requirements for the composition, processing, and labeling of organic pet food. The requirements would permit the types of processing allowed in paragraph (a) and the types of nonorganic ingredients allowed in paragraph (b) and proposed paragraph (c), and prohibit the practices and materials not allowed in paragraph (d) (please note that the proposed rule would redesignate, or rearrange, current paragraph (c) of this section as

[35] Data from the Institute for Feed Education & Research indicates that approximately 23 percent of the ingredient weight in conventional pet food is animal by-product and meal. This estimate is then applied to the estimate pounds of organic pet food as reported by the Organic Trade Association and current market prices.

Institute for Feed Education & Research. (March 2020). ''Pet food production and ingredient analysis.'' Organic Trade Association. (2022). Organic Industry Survey. p. 56.

[36] NOSB. (November 19, 2008). ''Formal recommendation by the National Organic Standards Board (NOSB) to the National Organic Program (NOP): Organic pet food standards recommendation.'' *https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Pet%20Food.pdf.*

paragraph (d)). By including pet food criteria as part of the handling standards but clearly separating the criteria from the livestock feed composition and labeling standards, the proposed rule would ensure that pet food is not subject to the prohibition of slaughter by-products that exists for livestock feed. The proposed rule would allow slaughter by-products in pet food under the same composition and labeling requirements for other multi-ingredient products described at § 205.301(a) through (d) and (f).

Paragraph (b) would permit organic pet food, like any other processed organic product, to contain nonagricultural and nonorganic substances allowed by the National List in § 205.605 (such as taurine, as proposed) and § 205.606. These ingredients may be used in processed pet food products sold as ''organic'' or ''made with organic (specified ingredients or food group(s)).'' Additionally, the proposed rule would allow vitamins and minerals in § 205.603(d)(2) and (3) for enrichment or fortification of pet food. Vitamins and minerals are often required to meet the nutritional needs of pets.

The proposed rule would also clarify that pet food labeled as organic must be labeled pursuant to the applicable portions of subpart D of the organic regulations (proposed § 205.270(c)). In particular, this means that organic pet food should be labeled according to the product composition requirements at § 205.301(a) through (d), and that pet food may use the following labeling categories: (1) ''100 percent organic;'' (2) ''organic,'' (3) ''made with organic (specified ingredients or food group(s));'' or (4) products containing less than 70 percent organic ingredients. This proposed action would allow the labeling of organic pet food using the same framework as most processed organic products (rather than the labeling requirements for livestock feed at § 205.301(e)).

The proposed changes to § 205.270 would not replace or modify requirements pertaining to pet food that are applicable under other federal or state laws or regulations. Any ingredients in pet food must comply with all applicable federal and state laws and regulations. AMS only regulates the organic claims of organic pet food. All other aspects of pet food production and sale must follow the relevant federal and state laws and regulations.

Sec. 205.605 (National List)

AMS proposes to modify the National List to allow the use of synthetic taurine in pet food. The rule proposes to add taurine to § 205.605, which describes nonagricultural substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).'' The proposed listing for taurine also specifies that taurine can be used only in pet food and not in other organic multi-ingredient products. Taurine is an amino sulfonic acid that many pets (all cats and some dog breeds) require but cannot obtain in adequate amounts by consuming pet food that does not contain added taurine. For that reason, AAFCO's cat nutrient profiles require taurine, and it is a common synthetic additive in pet foods.

This proposed addition follows an NOSB recommendation to add taurine to the National List as an allowed substance for use exclusively in pet foods. The NOSB concluded that taurine is necessary to meet nutritional requirements for cats. Also, based on public comment, the NOSB determined that taurine can also be necessary for dogs' nutrition, and, therefore, recommended taurine be allowed in pet food generally. AMS agrees with the NOSB's rationale and recommendation since taurine is essential for pet health and adequate taurine levels cannot be achieved using organic agricultural ingredients alone when pet food is cooked. This proposed rule, if finalized, would amend the regulations to provide for the use of taurine.

Individuals may petition to add other substances to the National List for use in organic pet food. Because organic pet food must meet all applicable federal and state laws and regulations, any person or organization petitioning to add a substance to the National List for use in organic pet food must ensure the use of that substance is consistent with applicable federal and state laws and rules. Synthetic substances petitioned for use in pet food would also be evaluated according to the existing criteria in OFPA (7 U.S.C. 6517 and 6518) and the USDA organic regulations (§ 205.600).

VI. Regulatory Analyses

Executive Orders 12866, 13563, 14094, and the Regulatory Flexibility Act

This rule does not meet the criteria of a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563 and updated by Executive Order 14094. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on ''small entities'' and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule in place of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. AMS has concluded that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, and, therefore, an analysis is not included. Below, AMS presents information about the industry and the possible effects of the rule on small entities to support this conclusion.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses. SBA's size standards are expressed in terms of number of employees or annual receipts and indicate the maximum allowed for an entity to be considered small.[37]

Mushroom Producers. AMS has considered the economic impact of this rulemaking on small mushroom producers. At the time of this analysis, small organic mushroom producers were listed under NAICS code 111411 (Mushroom Production) as grossing equal to or less than $4,500,000 per year.[38] AMS estimates that out of 229 domestic operations reporting sales of organic mushrooms, 14 operations exceed that threshold.[39] While most organic mushroom operations that would be affected by this rule are small entities, this rule has the potential to impose only minor costs on them related to paperwork burden (see Paperwork Reduction Action section below) and costs associated with

[37] U.S. SBA. (March 17, 2023). Table of size standards. *https://www.sba.gov/document/support-table-size-standards.*

[38] U.S. SBA. (March 17, 2023). Table of size standards. *https://www.sba.gov/document/support-table-size-standards.*

[39] The National Agricultural Statistics Service was unable to supply a precise tabulation of large organic operations due to disclosure concerns. AMS estimated the number of large mushroom operations and sales from large mushroom operations using the proportion of conventional mushroom operations by sales from the USDA's 2017 Census of Agriculture, available here: *https://www.nass.usda.gov/Publications/AgCensus/2017/index.php.* The same distribution is assumed to apply to organic mushroom operations.

sourcing organic spawn and substrate materials, when commercially available. AMS concludes that this rule, if promulgated, will not have a significant economic impact on a substantial number of these small entities.

Pet Food Operations. AMS has considered the economic impact of this rulemaking on small organic pet food producers. At the time of this analysis, small organic pet food producers were listed under NAICS code 311111 (Dog and Cat Food Manufacturing) as employing equal to or fewer than 1,250 employees.[40] AMS estimates that given the small size of the organic pet food market, most organic pet food operations are small entities. Pet food operations may incur small one-time paperwork costs (see Paperwork Reduction Act section below), but the proposed rule would establish standards for organic pet food handling that align with many existing industry practices. Additionally, the rule could allow operations to use additional inputs (*e.g.,* taurine) in pet food. AMS concludes that this rule, if promulgated, will not have a significant economic impact on a substantial number of these small entities.

Certifying agents. This proposed rule would also affect certifying agents that certify organic mushroom or pet food operations. At the time of this analysis, the SBA defined small agricultural service firms, which include certifying agents, as those having annual receipts equal to or less than $19,500,000 (NAICS code 541990—All Other Professional, Scientific and Technical Services). There are currently 74 USDA-accredited certifying agents, and AMS believes most of these certifying agents are small entities. Certifying agents must already comply with the current regulations and already certify these operations. Certifying agents may incur minor one-time paperwork costs (see Paperwork Reduction Act section below). However, this rule would reduce the current burden of creating and maintaining individual policies for organic mushroom production and organic pet food handling. AMS concludes that this rule, if promulgated, will not have a significant economic impact on a substantial number of these small entities.

Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations to avoid unduly burdening the court system. This proposed rule complies with these requirements. This rule would not be applied retroactively. Additionally, to prevent duplicative regulation, States and local jurisdictions are preempted under OFPA from creating accreditation programs for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in OFPA (7 U.S.C. 6514(b)). States are also preempted under sections 6503 through 6507 of OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to section 6507(b)(2) of OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of OFPA, this rulemaking would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399i), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136y).

OFPA at 7 U.S.C. 6520 provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under the statute that adversely affects such person or is inconsistent with the organic certification program established under OFPA. OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

Executive Order 13132

Executive Order 13132 mandates that federal agencies consider how their policymaking and regulatory activities impact the policymaking discretion of States and local officials and how well such efforts conform to the principles of federalism defined in said order. This executive order only pertains to regulations with clear federalism implications.

AMS has determined that this proposed rule conforms with the principles of federalism described in E.O. 13132. The rule would not impose substantial direct costs or effects on States, would not alter the relationship between States and the federal government, and would not alter the distribution of powers and responsibilities among the various levels of government. States have the opportunity to comment on any potential federalism implications during this proposed rule's comment period. AMS will consider these comments when assessing the federalism implications of any final rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. After consultation with the USDA Office of Tribal Relations, AMS has determined that a Tribal consultation for this rulemaking is not necessary, as it is unlikely to impact Tribes. However, AMS will conduct a Tribal consultation if stakeholders request one.

Civil Rights Impact Analysis

AMS has reviewed this rulemaking in accordance with the Departmental Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the rule might have on minorities, women, and/or persons with disabilities. After a careful review of the rule's intent and provisions, AMS determined that there is no evidence that this proposed rule would have

[40] U.S. SBA. (March 17, 2023). Table of size standards. *https://www.sba.gov/document/support-table-size-standards.*

adverse civil rights impacts on organic producers identifying as minorities, women, and/or persons with disabilities. Additionally, this proposed rule would not impose any requirements related to eligibility for benefits and services on protected classes, nor would the rule have the purpose or effect of treating classes of persons differently.

Protected individuals have the same opportunity to participate in NOP as non-protected individuals. USDA organic regulations prohibit discrimination by certifying agents. Specifically, 7 CFR 205.501(d) of the current regulations for accreditation of certifying agents provides that ''No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.'' Section 205.501(a)(2) requires certifying agents to ''[d]emonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart,'' including the prohibition on discrimination. The granting of accreditation to certifying agents under § 205.506 requires the review of information submitted by the certifying agent and an on-site review of the certifying agent's client operation. Further, if certification is denied, § 205.405(d) requires that the certifying agent notify the applicant of their right to file an appeal to the AMS Administrator in accordance with § 205.681.

These regulations provide protections against discrimination, thereby permitting all producers, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status, who voluntarily choose to adhere to the rules and qualify, to be certified as meeting NOP requirements by an accredited certifying agent. This action in no way changes any of these protections against discrimination.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), AMS is requesting OMB approval for a new information collection totaling 851 hours for the reporting and recordkeeping requirements contained in this proposed rule. OMB previously approved information collection requests (ICR) associated with the NOP and assigned OMB control number 0581–0191. AMS intends to merge this new information collection, upon OMB approval, into the approved 0581–0191 collection. Below, AMS describes and estimates the annual burden, *i.e.,* the amount of time and cost of labor, for entities to prepare and maintain information to participate in this proposed voluntary labeling program. OFPA, as amended, provides authority for this action.

Title: National Organic Program: Market Development for Mushrooms and Pet Food.

OMB Control Number: 0581–NEW.

Expiration Date of Approval: Three years from OMB date of approval.

Type of Request: New collection.

Abstract: Information collection would be necessary to implement reporting required by the proposed standards for organic mushroom production and pet food handling under the USDA organic regulations (§§ 205.210 and 205.270). This proposed rule would establish USDA organic requirements in these sectors to support consistent interpretation and remove regulatory uncertainty. By doing so, it would support the purposes of OFPA, ''to assure consumers that organically produced products meet a consistent standard'' and to ''establish national standards'' for products marketed as organic (7 U.S.C. 6501). Additional information on the purpose and need for this rule is included in the BACKGROUND section of this rule.

Overview

Information collection and recordkeeping would be required to demonstrate compliance with proposed new § 205.210 and proposed amendments to § 205.270 of the USDA organic regulations, 7 CFR part 205, that establish standards for mushroom production and pet food handling. Historically, while mushrooms have been managed as a crop and pet food has been manufactured in compliance with the livestock feed and/or handling standards, AMS has received reports that the lack of specific standards for mushrooms and pet food handling deters business investment and creates inefficiencies in these markets.

Mushrooms are not plants. They do not photosynthesize and are generally grown in controlled environments. While mushrooms can comply with most of the existing regulations governing crop production, including §§ 205.200–202 and 205.206, they have very distinct growing requirements that differ from plant crops and are not directly addressed in the current organic regulations. AMS is proposing to add § 205.210 to the USDA organic regulations to describe the specific practice standards for mushrooms that codify the processes and materials allowed in organic mushroom operations. This includes mushroom substrate requirements instead of the soil fertility and crop nutrient management requirements in § 205.203 and spawn production requirements in lieu of the parallel seeds and planting stock practice requirements in § 205.204.

AMS is proposing to apply the existing framework for the organic handling requirements at § 205.270 to pet food composition and labeling. Some parties interested in creating organic feed stated that it was not clear if organic pet food was allowed to contain slaughter by-products, which are prohibited in livestock feed. This proposed rule would clearly permit the use of slaughter by-products from organic livestock in organic pet food by establishing pet food regulations outside of the livestock feed standards.

These amendments would require one-time additional reporting for already certified pet food and mushroom operations, accredited certifying agents, and inspectors. Existing organic mushroom and pet food operations would need to review their existing organic system plans for compliance, certifiers would have to review the updated plans, and certifiers/inspectors would need training on the new regulation. The reporting burden for new and exempt operations in these sectors would remain unchanged from the current ICR, and recordkeeping burdens from the current ICR would remain unchanged for all respondents. Beyond the first year, AMS expects no increase in reporting and recordkeeping burden for any respondents. The continuing reporting and recordkeeping requirements are routine activities that are currently identified in the NOP's approved ICR.

Respondents

Six respondent types—certified operations (producers and handlers), accredited certifying agents, inspectors, foreign governments, state organic programs, and petitioners—have been identified in our currently approved information collection (0581–0191). AMS has identified three primary types of entities (respondents) that would need to submit new information because of this proposed rule: certified organic operations, accredited certifying agents, and organic inspectors. AMS does not expect this rule to impact any new operation, foreign governments, state organic programs, and petitioners as it only seeks to establish specific standards for mushroom and pet food operations, which would only require changes from existing operations and certifiers. The reporting burden for new and exempt operations in these sectors would remain unchanged from the ICR, and recordkeeping burdens from the current ICR would remain unchanged for all respondents.

Calculating Reporting and Recordkeeping Burden

AMS identifies three types of entities (respondents) that would need to submit and maintain information to participate in organic pet food and mushroom certification:

1. Organic pet food and mushroom operations.
2. Accredited certifying agents.
3. Inspectors.

To understand the reporting and recordkeeping costs of this rulemaking more precisely, AMS calculated the potential impacts utilizing domestic and foreign labor rates (per hour) plus benefits.

AMS calculates the time burden of the new reporting and recordkeeping requirements of this rulemaking by estimating the following:

1. The number of respondents.
2. Frequency of response.
3. Total number of burden hours per year.

The number of respondents is based on operation, certifier, inspector, and State Organic Program data from the Organic Integrity Database. The frequency of responses is estimated to be the total annual responses and the number of responses per respondent in twelve months. The total number of burden hours per year is estimated to be the total annual responses multiplied by the number of hours per response.

AMS estimates the cost (financial) burden of the new reporting and recordkeeping requirements of this rulemaking by estimating the following:

1. Total hours per respondent.
2. Total hours for all respondents.
3. Capital and other non-labor costs per respondent.
4. Total capital and other non-labor costs for all respondents.

The total hours per respondent and for all respondents were estimated based on the number of respondents and the amount of time AMS estimates would be needed to report and record new information based on this rulemaking.

1. Operations: Mushroom Producers and Pet Food Manufacturers

Domestic and foreign producers and handlers that are updating their organic system plan must address how their operation complies with the proposed mushroom or pet food standards. Operations would be required to update any changes in their operation or practices to their certifying agent at least annually. AMS has identified 229 domestic and 43 foreign-based operations that produce mushrooms and 31 domestic and 5 foreign-based operations that manufacture pet food requiring 308 reporting responses.[41]

The proposed mushroom production and pet food handling standards are estimated to require each current mushroom producer or pet food manufacturer to spend one hour to verify the compliance of their organic system plan with the proposed standards. AMS estimates the costs of the one-time reporting burden for all mushroom producers and pet food manufacturers to review and verify the compliance of their new or updated organic system plan at $15,391.55. This is based on 260 labor hours at $52.18 per labor hour (including benefit costs)[42] for 260 domestic operations, totaling $13,565.64; and 48 labor hours at $38.04 per labor hour (including benefit costs)[43] for 48 foreign operations, totaling $1,825.91 (See Table 3: USDA Certified Operations Reporting Burden). No new recordkeeping burden is incurred by this proposed rule as these operations are already certified and covered by existing recording keeping in the current Information Collection Request.[44]

TABLE 3—USDA CERTIFIED OPERATIONS (MUSHROOM PRODUCERS AND PET FOOD HANDLERS) REPORTING BURDEN

Respondent categories	Number of respondents	Wage + benefits	Total reporting hours	Total costs
USDA Certified Producers & Handlers—Domestic	260	$52.18	260	$13,565.64
USDA Certified Producers & Handlers—Foreign	48	38.04	48	1,825.91
USDA Organic Operations—All	308		308	15,391.55

[41] USDA. Organic Integrity Database. *https://organic.ams.usda.gov/IntegrityPlus/Search.aspx.* To obtain the relevant data, search for ''mushroom'' and ''pet,dog,canine,cat,feline'' in the ''Certified Products'' field. Accessed May 9, 2023.

[42] The cost of labor per hour for domestic operations was obtained by calculating the sum of the mean hourly wage for agricultural workers and the hourly cost of worker benefits. In May 2022, the mean hourly wage for Farmers, Ranchers, and Other Agricultural Managers (Standard Occupational Classification code 11–9013) was $40.29. U.S. Bureau of Labor Statistics. (April 25, 2023). ''Occupational employment and wage statistics: May 2022 national occupational employment and wage estimates United States.'' *https://www.bls.gov/oes/current/oes_nat.htm#top.* Domestic benefits were reported to be 29.5 percent of total average civilian employer compensation costs. U.S. Bureau of Labor Statistics. (June 16, 2023). ''Employer costs for employee compensation summary.'' USDL–23–0488. *https://www.bls.gov/news.release/ecec.nr0.htm.*

[43] Wages in foreign countries are estimated to be 70.15 percent of U.S wages. This percentage was derived by dividing the World Bank estimates of Organization for Economic Co-Operation and Development (OECD) member countries in 2021 by the wages of the United States in 2021. The World Bank. ''GDP per capita PPP—OECD members.'' Accessed August 2023. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=OE.* Foreign worker benefit rates are based on the average OECD member countries' tax wedge rate of 34.59 percent in 2021. OECD. ''Taxing Wages—Comparative tables.'' Accessed May 9, 2023. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[44] The current Information Collection Request can be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202001-0581-001.*

2. Certifying Agents

Certifying agents are State, private, or foreign entities accredited by the USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and the USDA organic regulations. Certifying agents determine whether a producer or handler meets the organic requirements, using detailed information from the operation about its specific practices and on-site inspection reports from organic inspectors. There are 39 certifying agents (31 domestic and 8 foreign) accredited by USDA certifying organic mushroom operations and 12 certifying agents (8 domestic and 4 foreign) accredited by USDA certifying organic pet food processing that would require 308 reporting responses to certify each organic operation and 51 responses for staff training.[45]

The proposed mushroom production and pet food handling standards would require certifying agents of current mushroom producers and pet food manufacturers to spend one hour for each producer or manufacturer to verify their compliance with the proposed standards. In addition, it is estimated that certifying agents would need to provide one hour of training regarding the proposed mushroom production and pet food handling standards to their certification review personnel. Each certifying agent certifying organic mushroom production would incur approximately eight hours of first-time reporting burden (one hour for training and seven hours for approximately seven operations per certifier)[46] but no new recordkeeping burden due to this proposed rule. Each certifying agent certifying organic pet food processing would incur approximately four hours of first-time reporting burden (one hour for training and three hours for approximately three operations per certifier)[47] but no new recordkeeping burden due to this proposed rule. AMS estimates the costs of the one-time reporting burden for all certifying agents to review and verify the compliance of the new or updated organic system plan of mushroom producers and pet food manufacturers and the provision of training at $16,170.00. This is based on 279 labor hours at $47.93 per labor hour (including benefit costs)[48] for 39 domestic certifying agents, totaling $13,381.73; and 80 labor hours at $34.94 per labor hour (including benefit costs)[49] for 12 foreign certifying agents, totaling $2,788.27. (See Table 4: USDA Certifying Agents Reporting Burden).

TABLE 4—USDA CERTIFYING AGENTS (CERTIFYING MUSHROOM PRODUCERS AND PET FOOD HANDLERS) REPORTING BURDEN

Respondent categories	Number of respondents	Wage + benefits	Total reporting hours	Total costs
USDA U.S.-Based Certifiers—Mushrooms	31	$47.93	247.21	$11,848.04
USDA Foreign-Based Certifiers—Mushrooms	8	34.94	64.79	2,229.18
USDA U.S.-Based Certifiers—Pet food	8	47.93	32	1,533.69
USDA Foreign-Based Certifiers—Pet food	4	34.94	16	559.09
USDA Certifiers—All	*51		359	16,170.00

*Some certifiers may certify both pet food and mushroom operations but are counted as separate entities in this column.

3. Organic Inspectors

Inspectors conduct on-site inspections of certified operations and operations applying for certification and report the findings to the certifying agent. Inspectors may be independent contractors or employees of certifying agents. Inspectors provide an inspection report to the certifying agent for each operation inspected (§ 205.404(a)). Currently, AMS estimates that inspectors would receive one hour of training on the proposed mushroom production and pet food handling standards. Inspectors do not have recordkeeping obligations, as certifying agents maintain the records of inspection reports.

According to the International Organic Inspectors Association, there are approximately 184 inspectors in the world that inspect organic crop, livestock, handling, and/or wild crop operations' compliance with USDA organic standards.[50] Thus, the proposed rule would require approximately 184 reporting responses from inspectors. AMS estimates the costs of the one-time reporting burden for all inspectors to receive one hour of training on the proposed mushroom production and pet food handling standards at $5,111.82. This is based on 123 labor hours for 123 U.S.-based inspectors to receive training in the U.S. at $30.52 per labor hour, (including benefit costs),[51] totaling $3,754.35 in costs; and 61 labor hours for 61 foreign-based inspectors to receive training at $22.25 per hour (including benefit costs),[52] totaling $1,357.47 in costs. (See Table 5: Inspectors Reporting Burden).

[45] USDA. Organic Integrity Database. *https://organic.ams.usda.gov/IntegrityPlus/Search.aspx.* To obtain the relevant data, search for ''mushroom'' and ''pet,dog,canine,cat,feline'' in the ''Certified Products'' field. Accessed May 9, 2023.

[46] This is the calculated average number of mushroom operations (272) per certifier certifying mushrooms (39).

[47] This is the calculated average number of pet food operations (36) per certifier certifying pet food (12).

[48] The cost of labor per hour for domestic certifying agents was obtained by calculating the sum of the mean hourly wage for compliance officers and the hourly cost of worker benefits. In May 2022, the mean hourly wage for Compliance Officers (Standard Occupational Classification (SOC) code 13–1041) was $37.01. U.S. Bureau of Labor Statistics. (April 25, 2023). ''Occupational employment and wage statistics: May 2022 national occupational employment and wage estimates United States.'' *https://www.bls.gov/oes/current/oes_nat.htm#top.* Domestic benefits were reported to be 29.5 percent of total average civilian employer compensation costs. U.S. Bureau of Labor Statistics. (June 16, 2023). ''Employer costs for employee compensation summary.'' USDL–23–0488. *https://www.bls.gov/news.release/ecec.nr0.htm.*

[49] See footnote 48.

[50] This estimate is based on data from the International Organic Inspectors Association Membership Directory, available at: *https://www.ioia.net/member-directory.*

[51] The cost of labor per hour for domestic inspectors was obtained by calculating the sum of the mean hourly wage for agricultural inspectors and the hourly cost of worker benefits. In May 2022, the mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was $23.57. U.S. Bureau of Labor Statistics. (April 25, 2023). ''Occupational employment and wage statistics: May 2022 national occupational employment and wage estimates United States.'' *https://www.bls.gov/oes/current/oes_nat.htm#top.* Domestic benefits were reported to be 29.5 percent of total average civilian employer compensation costs. U.S. Bureau of Labor Statistics. (June 16, 2023). ''Employer costs for employee compensation summary.'' USDL–23–0488. *https://www.bls.gov/news.release/ecec.nr0.htm.*

[52] See footnote 48.

TABLE 5—INSPECTORS REPORTING BURDEN

Respondent categories	Number of respondents	Wage + benefits	Total reporting hours	Total costs
USDA U.S.-based Inspectors	123	$30.52	123	$3,754.35
USDA Foreign based inspectors	61	22.25	61	1,357.47
USDA Inspectors—All	184		184	5,111.82

Summary of Reporting Burden

Total (Domestic and Foreign) Information Collection Cost (Reporting) of Proposed Rule: $36,673.37 (See Table 6: Total Reporting Burden)

AMS estimates the public reporting burden for this information collection to be 851 hours at a total cost of $36,673.37 with a total number of 543 respondents. Respondents comprise currently certified organic mushroom producers and pet food manufacturers, USDA accredited certifying agents, and inspectors.

TABLE 6—TOTAL REPORTING BURDEN

	Total number of reporting respondents	Total reporting hours—all	Total all costs
Summary of Tables 1, 2, & 3	543	851	$36,673.37

Total All Reporting Burden Cost: $36,673.37.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 1.57 hours per year per response.

Respondents: Certified operations, certifying agents, and inspectors.

Estimated Number of Reporting Respondents: 543.

Estimated Number of Reporting Responses: 851.

Estimated Total Reporting Burden on Respondents: 851 hours.

Estimated Total Annual Reporting Hours per Reporting Respondent: 1.57 reporting hours per reporting respondent.

Estimated Total Annual Reporting Responses per Reporting Respondent: 1.57 reporting responses per reporting respondent.

Estimated Total Annual Reporting Hours per Reporting Response: 1.57 hours per reporting response.

Total Domestic Reporting Burden Cost: $30,701.72

Respondents: Certified operations, certifying agents, and inspectors.

Estimated Number of Domestic Reporting Respondents: 422 respondents.

Estimated Number of Domestic Reporting Responses: 662 responses.

Estimated Total Annual Reporting Burden on Domestic Respondents: 662 hours.

Total Foreign Reporting Burden Cost: $5,971.65

Respondents: Certified operations, certifying agents, and inspectors.

Estimated Number of Foreign Reporting Respondents: 121 respondents.

Estimated Number of Foreign Reporting Responses: 189 responses.

Estimated Total Annual Reporting Burden on Foreign Respondents: 189 hours.

Summary of Recordkeeping Burden

There are no expected recordkeeping burdens as a result of the proposed rule.

Comments

AMS is inviting comments from all interested parties concerning the information collection that would be required as a result of the proposed amendments to 7 CFR part 205. AMS seeks comment on the following subjects:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would 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. Ways to enhance the quality, utility, and clarity of the information to be collected.

4. Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Livestock, National List, National Organic Standards Board (NOSB), Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation, Sunset.

For the reasons stated in the preamble, AMS proposes to amend 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.2 by:

■ a. Revising the definitions of ''Compost'' and ''Crop'';

■ b. Adding in alphabetical order definitions for ''Mushroom'', ''Mushroom substrate'', ''Mycelium'', ''Pet'', ''Pet food'', ''Spawn'', and ''Spawn media''; and

■ c. Revising the definition of ''Wild crop''.

The revisions and additions read as follows:

§ 205.2 Terms defined.

* * * * *

Compost. The product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil or as a component of mushroom substrate.

* * * * *

Crop. Pastures, cover crops, green manure crops, catch crops, mushrooms, or any plant or part of a plant intended to be marketed as an agricultural product, fed to livestock, or used in the field to manage nutrients and soil fertility.

* * * * *

Mushroom. The edible, fleshy, spore-bearing fruiting body of a fungus.

Mushroom substrate. The base material, such as grain, wood, and/or other agricultural materials, from which mushrooms are cultivated or grown. This base material can include composted material.

Mycelium. A mass of branching, thread-like hyphae (fungal structures).

* * * * *

Pet. Any domestic animal not used for the production and sale of food, fiber, or other agricultural-based consumer products.

Pet food. Any commercial feed prepared and distributed for pet consumption.

* * * * *

Spawn. Spawn media that has been colonized by mycelium, which is used to inoculate mushroom substrates.

Spawn media. A carrier, such as grains or minerals, that, when colonized with mycelium, creates spawn.

* * * * *

Wild crop. Any mushroom, plant, or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agricultural management.

* * * * *

■ 3. Add § 205.210 to read as follows:

§ 205.210 Mushroom production practice standard.

(a) The producer must manage mushroom production in accordance with the provisions of §§ 205.200, 205.201, 205.202 as applicable, 205.203(e), 205.206(a)(2) and(3), and 205.206(b) through (f). The producer may manage crop nutrients for mushroom production in accordance with the provisions of § 205.203(d)(1) through (5).

(b) The producer must manage mushroom substrate and spawn media, including spent mushroom substrate and spawn media, in a manner that does not contribute to contamination of crops, spawn, mushroom substrate, soil, or water by pathogenic organisms, heavy metals, or residues of prohibited substances.

(c) Mushroom substrate and spawn media may be composed of the following materials in accordance with the conditions specified in this paragraph (c):

(1) Composted plant and animal materials. Compost used in mushroom production must be described in the organic system plan. It must be produced through a process that maintains a temperature of at least 131 °F for at least three days;

(2) Uncomposted plant materials. Uncomposted plant materials must be organically produced: *Except,* that, nonorganically produced uncomposted plant materials may be used in mushroom production when an equivalent organically produced variety is not commercially available. Prohibited substances may not be applied to nonorganically produced uncomposted plant materials after harvest.

(3) Nonsynthetic substances, except those on the National List of nonsynthetic substances prohibited for use in organic crop production (§ 205.602); and

(4) Synthetic substances on the National List of synthetic substances allowed for use in organic crop production (§ 205.601).

(d) Spawn must be organic: *Except,* that, nonorganic spawn may be used to produce an organic crop when an equivalent organically managed variety is not commercially available. Organic spawn must use organic agricultural products as the spawn media and be under continuous organic management after the mycelium is applied to the organic spawn media.

■ 4. Amend § 205.270 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 205.270 Organic handling requirements.

* * * * *

(c) In addition to the substances described in paragraph (b) of this section, substances allowed under § 205.603(d)(2) and (3) may be used in or on pet food intended to be sold, labeled, or represented as ''organic'' or ''made with organic (specified ingredients or food group(s)),'' pursuant to § 205.301(b) and (c). Pet food labeled as organic must be labeled pursuant to the applicable portions of subpart D of this part.

* * * * *

■ 5. Amend § 205.601 by revising paragraphs (i) introductory text and (j) introductory text to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(i) As crop disease control.

* * * * *

(j) As crop or soil amendments.

* * * * *

■ 6. Amend § 205.605 by redesignating paragraphs (b)(36) and (37) as paragraphs (b)(37) and (38), respectively, and adding new paragraph (b)(36) to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(b) * * *

(36) Taurine—for use only in pet food.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–04973 Filed 3–8–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2024–BT–STD–0002]

Energy Conservation Program: Energy Conservation Standards for Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: In light of the United States Court of Appeals for the Fifth Circuit recently granting a petition for review of a final rule published by the U.S. Department of Energy (''DOE'') on January 19, 2022, and remanding the matter to DOE for further proceedings, DOE is initiating an information and data gathering effort on whether ''short-cycle'' product classes for dishwashers, residential clothes washers, and consumer clothes dryers are warranted under the Energy Policy and Conservation Act. In this request for information, DOE solicits data and information from the public to help

DOE in its rulemaking to evaluate whether: products with a ''short cycle'' as the normal cycle are available in the market; and products with a ''short cycle'' as the normal cycle should be subject to different standards than products without a ''short cycle'' as the normal cycle.

DATES: Written comments and information are requested and will be accepted on or before April 10, 2024.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*under docket number EERE–2024–BT–STD–0002. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments may submit comments, identified by docket number EERE–2024–BT–STD–0002, by any of the following methods:

(1) *Email: ShortCycle2024STD0002@ee.doe.gov*. Include the docket number EERE–2024–BT–STD–0002 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 1000 Independence Ave. SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2024-BT-STD-0002*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov*.

For further information on how to submit a comment, or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The following section briefly discusses the statutory authority underlying this request for information (''RFI''), as well as some of the historical background relevant to dishwashers, residential clothes washers (''RCWs''), and consumer clothes dryers.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include dishwashers, RCWs, and consumer clothes dryers, the subjects of this document. (42 U.S.C. 6292(a)(6), (7), and (8), respectively)

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their product complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). (42 U.S.C. 6295(s)). The DOE test procedures for dishwashers appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendices C1 and C2. The DOE test procedures for RCWs appear at 10 CFR part 430, subpart B, appendices J and J2. The DOE test procedures for consumer clothes dryers appear at 10 CFR part 430, subpart B, appendices D1 and D2.

EPCA prescribed energy conservation standards for dishwashers, RCWs, and consumer clothes dryers (42 U.S.C. 6295(g)(1) and (10)(A); 42 U.S.C. 6295(g)(2) and (9)(A); and 42 U.S.C. 6295(g)(3)) and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (10)(B); 42 U.S.C. 6295(g)(4) and (9)(B); and 42 U.S.C. 6295(g)(4)) Not later than six years after

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination (''NOPD'') that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) DOE must make the analysis on which a NOPD or NOPR is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) Not later than two years after a NOPR is issued, DOE must publish a final rule amending the energy conservation standard for the product. (42 U.S.C. 6295(m)(3)(A))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including dishwashers, RCWs, and consumer clothes dryers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the establishment of such standard will not result in significant conservation of energy (or, for certain products, water), or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. A rule prescribing an energy conservation standard for a type (or class) of product must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments to EPCA contained in the Energy Independence and Security Act of 2007, Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and standards for dishwashers, RCWs, and consumer clothes dryers address standby mode and off mode energy use.

B. History of Rulemakings for Short-Cycle Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers

The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, the Competitive Enterprise Institute (''CEI'') petitioned DOE for the issuance of a rule establishing a new product class under 42 U.S.C. 6295(q) that would cover dishwashers with a cycle time of less than one hour from washing through drying.[3] On October 30, 2020, DOE published a final rule that established a product class for standard-size dishwashers with a cycle time for the normal cycle[4] of 60 minutes or less. 85 FR 68723 (''October 2020 Final Rule'').

Following this, having determined that similarities exist between the consumer use of dishwashers, RCWs, and consumer clothes dryers (*i.e.,* products that provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average), DOE published a final rule on December 16, 2020, that established product classes for top-loading RCWs and certain classes of consumer clothes

[3] Available at *www.regulations.gov/document/EERE-2018-BT-STD-0005-0006.*

[4] Through the remainder of this document, DOE uses the term ''normal cycle'' to refer to the cycle required for test under the applicable DOE test procedure.

dryers with a cycle time of less than 30 minutes, and front-loading RCWs with a cycle time of less than 45 minutes. 85 FR 81359 (''December 2020 Final Rule'').

The October 2020 Final Rule and the December 2020 Final Rule specified that the short-cycle product classes created by their respective rules are not currently subject to energy or water conservation standards. 85 FR 68723, 68742; 85 FR 81359, 81376.

On January 19, 2022, DOE published a final rule (''January 2022 Final Rule'') revoking the October 2020 Final Rule and the December 2020 Final Rule on the basis that those earlier rules resulted in amended energy conservation standards for the short-cycle product classes, but did not determine whether relevant statutory criteria for amending standards were met. 87 FR 2673. The January 2022 Final Rule reinstated the prior product classes and applicable standards for these covered products. *Id.*

On March 17, 2022, various States filed a petition in the Fifth Circuit Court of Appeals seeking review of a final rule revoking two final rules that established product classes for residential dishwashers with a cycle time for the normal cycle of 60 minutes or less, top-loading RCWs and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading RCWs with a cycle time of less than 45 minutes (collectively, ''short-cycle product classes''). The petitioners argued that the final rule revoking the short-cycle product classes violated EPCA and was arbitrary and capricious. On January 8, 2024, the United States Court of Appeals for the Fifth Circuit granted the petition for review and remanded the matter to DOE for further proceedings consistent with the Fifth Circuit's opinion. *See Louisiana* v. *United States Department of Energy,* 90 F.4th 461 (5th Cir. 2024).

In this request for information, DOE is commencing a rulemaking process on remand from the Fifth Circuit (the Remand Proceeding) by soliciting further information, relevant to the issues identified by the Fifth Circuit, regarding any short cycle product classes. DOE intends to use the data and information collected in response to this request for information to conduct the analysis required by 42 U.S.C. 6295(q)(1)(B) to determine whether any short-cycle products have a ''capacity or other performance-related feature [that] . . . justifies a higher or lower standard from that which applies (or will apply) to other products. . . .''

The current standards applicable to residential clothes washers, dishwashers, and consumers clothes dryers are in 10 CFR 430.32(g)(4), 10 CFR 430.32(f)(1), and 10 CFR 430.32(h)(3), respectively. In addition, EPCA's anti-backsliding provision precludes DOE from prescribing any amended standard ''which increases the maximum allowable energy use'' of a covered product. 42 U.S.C. 6295(o)(1).

II. Request for Information and Comments

In this request for information, DOE is soliciting further information, relevant to the issues identified by the Fifth Circuit, regarding short-cycle product classes for dishwashers, RCWs, and consumer clothes dryers. DOE intends to use the data and information collected in response to this request for information to conduct the analysis required by 42 U.S.C. 6295(q)(1)(B) to determine whether short-cycle products should be subject to a different standard than non-short-cycle products.

In this section, DOE has identified specific information and data on which it seeks input regarding ''short cycles'' for dishwashers, RCWs, and consumer clothes dryers.

As discussed, the October 2020 Final Rule and December 2020 Final Rule established short-cycle product classes for dishwashers with a normal cycle time of 60 minutes or less; top-loading standard-size RCWs with an average cycle time of less than 30 minutes and front-loading standard-size RCWs with an average cycle time of less than 45 minutes; and vented electric standard-size clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes. 85 FR 68723; 85 FR 81359, 81360.

Issue 1: DOE requests information on whether manufacturers optimize their dishwasher, RCW, or consumer clothes dryer normal cycles for a target cycle length, and if so, what target cycle times are considered. DOE requests data indicating what a consumer-acceptable cycle time is for the normal cycle in dishwashers, RCWs, and consumer clothes dryers.

Issue 2: DOE requests data indicating how consumers trade off preferences between cycle time and other product characteristics.

As presented in the rulemaking dockets for the October 2020 Final Rule and the December 2020 Final Rule, DOE has previously published the following cycle time data: the results of DOE testing of 31 standard-size dishwashers, including Cleaning Indexes; [5] individual test cycle and average cycle time data for 23 top-loading standard-size RCWs and 20 front-loading standard-size RCWs tested by DOE; [6] cycle time data for 6 vented electric standard-size and 8 vented gas consumer clothes dryers tested by DOE; [7] and cycle time data for an additional 245 vented electric standard-size and 110 vented gas consumer clothes dryers from the ENERGY STAR product database.[8]

Issue 3: DOE requests information on dishwashers, RCWs, and consumer clothes dryers that are currently available on the market with normal cycle times that meet consumer expectations of a short cycle for each product. For any such models, DOE requests data on the energy and water consumption. DOE also requests data and information on whether and how such products contain any unique design attributes or performance characteristics compared to other products with longer normal cycle times, and what drives such differences from a design perspective.

Issue 4: DOE seeks data regarding the historical change in cycle times for dishwashers, RCWs, and consumer clothes dryers.

In addition, DOE notes that most basic models of dishwashers, RCWs, and consumer clothes dryers also provide multiple cycles outside the normal cycle. For instance, a dishwasher may have a quick cycle, heavy cycle, delicates, *etc.* in addition to the normal cycle. These additional cycles may provide either longer or shorter cycle times than the normal cycle and may also be designed to optimize other performance characteristics or be optimized for different loads than the normal cycle.

Issue 5: For all models, DOE requests comment on how manufacturers design or optimize any shorter cycle(s) on a given model differently than the normal cycle on that same model. DOE further requests information on whether any design or performance tradeoffs are made on these shorter cycles, and if so, what those tradeoffs are and to what extent they differ from the normal cycle.

Issue 6: DOE requests comment on whether manufacturers plan to (or would continue to) maintain two separate product lines—one optimized to meet consumer demand for short cycles, and one optimized for attributes other than cycle time—and if so, DOE requests information on the financial impacts of developing and maintaining two separate product lines instead of one. DOE further requests comment on

[5] Available at *www.regulations.gov/document/EERE-2018-BT-STD-0005-3213.*

[6] Available at *www.regulations.gov/document/EERE-2020-BT-STD-0001-0007.*

[7] *Ibid.*

[8] *Ibid.*

which product line manufacturers would prioritize, if they decided to offer only a single product line.

Issue 7: DOE requests information on consumer preferences for: (1) a short cycle as the normal cycle and (2) the presence of short cycles available as cycle types outside the normal cycle.

Issue 8: DOE requests historical market information on any dishwashers, RCWs, or consumer clothes dryers that have been advertised or designed to provide a short cycle, and the relevant performance attributes of such products (including but not limited to energy use, water use, and cleaning performance).

Issue 9: For all models, not limited to those designed for a short cycle as the normal cycle, DOE requests data and information about consumer behaviors that affect energy and water consumption, such as pre-washing, handwashing, and running multiple cycles on the same load, and whether and how these behaviors may change according to the cycle selected.

Issue 10: For all models, not limited to those designed for a short cycle as the normal cycle, DOE requests data regarding cycle time and energy and water consumption that would demonstrate whether a separate standard level whether higher or lower should be considered for products with a given cycle length pursuant to 42 U.S.C. 6295(q)(2).

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to short cycles for dishwashers, RCWs, and consumer clothes dryers.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this request for information.

Signing Authority

This document of the Department of Energy was signed on February 29, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is

maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–04772 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0464; Project Identifier MCAI–2022–01556–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–09–03, which applies to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2021–09–03 requires repetitive replacements of the emergency locator transmitter (ELT) antenna and repetitive inspections of the exterior fuselage skin around the ELT antenna attachment area. Since the FAA issued AD 2021–09–03, it has been reported that there was an in-service failure of an ELT antenna that occurred before the repetitive replacement interval required by AD 2021–09–03, and that a terminating action was developed. This proposed AD would continue to require the actions in AD 2021–09–03 and would require replacement of the ELT antenna with a new ELT antenna, inspection of the exterior fuselage skin around the ELT antenna attachment holes, and repair if necessary, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 25, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0464; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the Transport Canada AD identified in this NPRM, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation*. It is also available at *regulations.gov* under Docket No. FAA–2024–0464.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 860–386–1786; email: *yaser.m.osman@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0464; Project Identifier MCAI–2022–01556–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 860–386–1786; email: *yaser.m.osman@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–09–03, Amendment 39–21516 (86 FR 20266, April 19, 2021); corrected April 27, 2021 (86 FR 22111) (AD 2021–09–03), for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2021–09–03 was prompted by an MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2021–10, dated March 18, 2021 (Transport Canada AD CF–2021–10), to correct an unsafe condition.

AD 2021–09–03 requires repetitive replacements of the ELT antenna with a new ELT antenna and repetitive inspections for damage of the exterior fuselage skin around the ELT antenna attachment area. The FAA issued AD

2021–09–03 to address ELT antenna failure, which can lead to the loss of the ELT antenna and the development of fuselage cracks that can result in an inability to maintain cabin pressure.

Actions Since AD 2021–09–03 Was Issued

Since the FAA issued AD 2021–09–03, Transport Canada superseded Transport Canada AD CF–2021–10 and issued Transport Canada AD CF–2022–67, dated December 6, 2022 (Transport Canada AD CF–2022–67) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states that since Transport Canada AD CF–2021–10 was issued, an aluminum ELT antenna has been made available to prevent ELT antenna failures resulting from vibration loads induced by air vortices shed by the Gogo 2Ku antenna radome. In addition, there was an in-service failure of an ELT antenna that occurred before the repetitive replacement interval required by Transport Canada AD CF–2021–10 was reached. The MCAI also states installation of the aluminum ELT antenna terminates the requirements of Transport Canada CF–2022–67, and that the applicability has been limited to airplanes on which the aluminum ELT antenna has not been installed in production.

The FAA is proposing this AD to address ELT antenna failure, which can lead to the loss of the ELT antenna and the development of fuselage cracks that can result in an inability to maintain cabin pressure. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0464.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2021–09–03, this proposed AD would retain all of the requirements of AD 2021–09–03. Those requirements are referenced in Transport Canada AD CF–2022–67, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2022–67 specifies procedures for:

- Repetitive replacements of the ELT antenna with a new ELT antenna and repetitive inspections for damage (including cracking) of the exterior fuselage skin around the ELT antenna attachment area, and
- A one-time replacement of the ELT antenna with a new aluminum ELT antenna, and detailed inspection for damage (including cracking) of the exterior fuselage skin around the ELT antenna attachment holes, and repair of any damage, which terminate the repetitive replacements and inspections.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2022–67 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2022–67 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2022–67 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2022–67 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0464 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–09–03	4 work-hours × $85 per hour = $340	$4,230	$4,570	$255,920
New proposed actions	4 work-hours × $85 per hour = $340	5,561	5,901	330,456

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × $85 per hour = $340	$2,000	$2,340

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–09–03, Amendment 39–21516 (86 FR 20266, April 19, 2021); corrected April 27, 2021 (86 FR 22111); and

■ b. Adding the following new AD:

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2024–0464; Project Identifier MCAI–2022–01556–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 25, 2024.

(b) Affected ADs

This AD replaces AD 2021–09–03, Amendment 39–21516 (86 FR 20266, April 19, 2021); corrected April 27, 2021 (86 FR 22111) (AD 2021–09–03).

(c) Applicability

This AD applies to Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–67, dated December 6, 2022 (Transport Canada AD CF–2022–67).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings; 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of the failure of emergency locator transmitter (ELT) antennas, including an in-service failure that occurred before the repetitive replacement interval required by AD 2021–09–03, and by the development of a terminating action. The FAA is issuing this AD to address ELT antenna failure. The unsafe condition, if not addressed, could result in loss of the ELT antenna and the development of fuselage cracks that can result in an inability to maintain cabin pressure.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–67.

(h) Exception to Transport Canada AD CF–2022–67

(1) Where Transport Canada AD CF–2022–67 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2022–67 refers to April 1, 2021 (the effective date of Transport Canada AD CF–2021–10, dated March 18, 2021), this AD requires using May 4, 2021 (the effective date of AD 2021–09–03).

(3) Where Transport Canada AD CF–2022–67 refers to hours air time, this AD requires using flight hours.

(4) Where paragraph C. of Transport Canada AD CF–2022–67 specifies to ''replace the ELT antenna with a new aluminum ELT antenna and inspect the exterior fuselage skin around the ELT antenna attachment holes for damage, repairing any damage found before further flight,'' this AD requires replacing that text with ''replace the ELT antenna with a new aluminum ELT antenna, including doing an inspection of the exterior fuselage skin around the ELT antenna attachment holes for damage, and, before further flight, repair any damage found.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2021–09–03 are not approved as AMOCs for the corresponding provisions of Transport Canada AD CF–2022–67 that are required by paragraph (g) of this AD.

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

(j) Additional Information

For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 860–386–1786; email: *yaser.m.osman@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2022–67, dated December 6, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–67, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

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

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

Issued on March 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–04955 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0463; Project Identifier AD–2023–00792–T

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes. This proposed AD was prompted by a report of a non-conforming installation of spoiler wire bundles that led to unintended spoiler motion, including one instance of spoiler hardover. Further investigation identified the potential for a hardover of more than one flight spoiler on the same wing, which can exceed full lateral control capability leading to loss of control of the airplane. This proposed AD would require a one-time inspection of the clearance between the spoiler control wire bundles and the adjacent structure, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 25, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0463; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view the service information that will be incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0463.

FOR FURTHER INFORMATION CONTACT: Michael Closson, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3973; email: *Michael.P.Closson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0463; Project Identifier AD–2023–00792–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Michael Closson, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3973; email: *Michael.P.Closson@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of multiple unusual spoiler deployments, which resulted in an un-commanded roll to the right during cruise. The related ''SPOILERS'' fault light on the P5–3 panel came on, and the spoiler control electronics (SCE) issued spoiler 10 fault code 27–01630. This event was noted as intermittent and was seen on multiple flights. A subsequent investigation found the root cause of the event was wire chafing damage due to spoiler control wire bundles riding on the landing gear beam rib in the right wing trailing edge due to non-conforming installation of spoiler wire bundles that occurred during production. This condition, if not

addressed, could result in loss of control of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023. This service information specifies procedures for spoiler control wire bundles clearance measurement and applicable on-condition actions. On-condition actions include a detailed inspection of the spoiler control wire bundles and adjacent structure for chafing damage, repair of any spoiler control wire bundles and any structural damage, and adjustment of the spoiler control wire bundles to ensure clearance requirements are met.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures, see this service information at *regulations.gov* under Docket No. FAA–2024–0463.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 207 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement of wire bundle clearance	1 work-hour × $85 per hour = $85	$0	$85	$17,595

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	1 work-hour × $85	$0	$85
Rework cable bundles without chafing damage to wires or airplane structure.	2 work-hours × $85 per hour = $170	0	170
Rework cable bundles with chafing damage to wires or airplane structure.	5 work-hours × $85 per hour = $425	0	425

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–0463; Project Identifier AD–2023–00792–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 25, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of a non-conforming installation of spoiler wire bundles that led to unintended spoiler motion, including one instance of spoiler hardover. Further investigation identified the potential for a hardover of more than one flight spoiler on the same wing, which can exceed full lateral control capability leading to loss of control of the airplane. The FAA is issuing this AD to address improper clearance between the spoiler control wire bundles and the adjacent structure, which can lead to damage to the wire bundle, causing unintentional spoiler motion. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–27A1325, dated July 14, 2023, which is referred to in Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023.

(h) Exception to Service Information Specifications

Where the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023, use the phrase ''the original issue date of Requirements Bulletin 737–27A1325 RB,'' this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Michael Closson, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3973; email: *Michael.P.Closson@faa.gov*.

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–27A1325 RB, dated July 14, 2023.

(ii) [Reserved]

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

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

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

Issued on March 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–04956 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0462; Project Identifier MCAI–2022–00523–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–11–17 and AD 2021–11–22, which apply to all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. AD 2021–11–17 requires a one-time visual inspection of certain part-numbered main rotor actuators (MRAs). AD 2021–11–22 requires revising the life limits of certain parts and removing each part that has reached its life limit. Since the FAA issued those ADs, it was determined that repetitive inspections of the MRAs are necessary, new and more restrictive tasks and limitations have been issued, and that it is necessary to expand the applicability. This proposed AD would continue to require the actions required by AD 2021–11–17 and AD 2021–11–22, except this proposed AD would require changing the one-time MRA inspection to a repetitive inspection and incorporating other new and more restrictive tasks and limitations by revising the airworthiness limitations section (ALS) of the existing helicopter maintenance manual or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable. This proposed AD would also expand the applicability by adding Model EC635T2+ helicopters. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 25, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0462; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this NPRM, contact Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–0462.

Other Related Service Information: For Airbus service information identified in this NPRM, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or website *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0462; Project Identifier MCAI–2022–00523–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–11–17, Amendment 39–21579 (86 FR 31087, June 11, 2021) (AD 2021–11–17), for all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. AD 2021–11–17 requires a one-time visual inspection of the MRA. The FAA issued AD 2021–11–17 to prevent failure of the MRA and subsequent loss of control of the helicopter.

The FAA issued AD 2021–11–22, Amendment 39–21584 (86 FR 31101, June 11, 2021) (AD 2021–11–22), for Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. AD 2021–11–22 requires revising the life limit of certain parts and removing from service each part that has reached its life limit. The FAA issued AD 2021–11–22 to prevent certain parts from remaining in service beyond their fatigue life, resulting in failure of the part and subsequent loss of control of the helicopter.

Actions Since AD 2021–11–17 and AD 2021–11–22 Were Issued

Since the FAA issued AD 2021–11–17 and AD 2021–11–22, EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0067, dated April 13, 2022 (EASA AD 2022–0067), to correct an unsafe condition on Airbus Helicopters Deutschland GmbH Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters. You may examine EASA AD 2022–0067 in the AD docket at *regulations.gov* under Docket No. FAA–2024–0462.

Since the FAA issued AD 2021–11–17 and AD 2021–11–22, the FAA has also determined that it is necessary to expand the applicability by adding Model EC635T2+ helicopters. While the FAA type certificate data sheet for this model helicopter notes that import of this model helicopter is limited to serial number 0858 and that no other serial numbers are eligible for conversion and import, notes in a type certificate data sheet can change. Additionally, because the unsafe condition is likely to exist or develop on Model EC635T2+ helicopters, the FAA must issue an AD that applies to this model helicopter.

This proposed AD was prompted by new and more restrictive tasks and airworthiness limitations and the determination to expand the applicability. The FAA is proposing this AD to prevent failure of certain parts, which, if not addressed, could result in subsequent loss of control of the helicopter.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0067 requires replacing components before exceeding their life limits and accomplishing maintenance tasks within thresholds

and intervals specified in the applicable ALS as defined in EASA AD 2022–0067. Depending on the results of the maintenance tasks, EASA AD 2022–0067 requires accomplishing corrective action(s) or contacting AHD [Airbus Helicopters Deutschland GmbH AHD] for approved instructions and accomplishing those instructions. EASA AD 2022–0067 also requires revising the Aircraft Maintenance Programme (AMP) by incorporating the limitations, tasks, and associated thresholds and intervals described in the specified ALS as applicable to helicopter model and configuration. Revising the AMP constitutes terminating action for the requirements to replace components before exceeding their life limits and accomplish maintenance tasks within thresholds and intervals specified in the applicable ALS as required by EASA AD 2022–0067.

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

Other Related Service Information

The FAA also reviewed Airbus Chapter 04 ALS for EC135 P1, P2, P3, T1, T2, T3, limited to CDS, CPDS, P2+, T2+ helicopters, Revision 2, dated April 6, 2021, and Airbus Chapter 04 ALS for EC135 P3H and T3H helicopters, Revision 2, dated April 6, 2021. This service information specifies airworthiness limitations, tasks, and associated thresholds and intervals for various parts. Revision 2 of this service information specifies various updates for certain components.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0067, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0067 by reference in the FAA final rule. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0067 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0067. Service information referenced in EASA AD 2022–0067 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0462 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2022–0067 applies to Model EC635 P2+, EC635 P3, EC635 T1, and EC635 T3 helicopters, whereas this proposed AD would not because these model helicopters are not FAA type-certificated.

EASA AD 2022–0067 requires replacing certain components before exceeding applicable life limits, accomplishing certain maintenance tasks within thresholds and intervals as specified in the ALS, as defined within, and depending on the results, accomplishing corrective action within the compliance time specified in that ALS. EASA AD 2022–0067 also requires revising the approved AMP to incorporate the limitations, tasks, and associated thresholds and intervals described in that ALS within 12 months after its effective date. Whereas, this proposed AD would require revising existing documents and programs within 30 days to incorporate the limitations, tasks, and associated thresholds and intervals described in that ALS, and clarifies that if the initial instance of an incorporated limitation or threshold therein is reached before 30 days after the effective date of the final rule of this proposed AD, you still have up to 30 days after the effective date of the final rule of this proposed AD to accomplish the corresponding task.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 272 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the ALS of the existing helicopter maintenance manual or instructions for continued airworthiness for your helicopter and the existing approved maintenance or inspection program for your helicopter, as applicable, would take approximately 2 work-hours, for an estimated cost of $170 per helicopter and $46,240 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing airworthiness directive (AD) 2021–11–17, Amendment 39–21579 (86 FR 31087, June 11, 2021); and AD 2021–11–22, Amendment 39–21584 (86 FR 31101, June 11, 2021); and

■ b. Adding the following new AD:

Airbus Helicopters Deutschland GmbH (AHD): Docket No. FAA–2024–0462; Project Identifier MCAI–2022–00523–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 25, 2024.

(b) Affected ADs

This AD replaces AD 2021–11–17, Amendment 39–21579 (86 FR 31087, June 11, 2021), and AD 2021–11–22, Amendment 39–21584 (86 FR 31101, June 11, 2021).

Note 1 to paragraph (b): The requirements of this AD capture the latest tasks and life limits required to prevent the unsafe conditions addressed by the ADs that are identified in paragraph (b) of this AD.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, and EC635T2+ helicopters, certificated in any category.

Note 2 to paragraph (c): Helicopters with an EC135P3H designation are Model EC135P3 helicopters, and helicopters with an EC135T3H designation are Model EC135T3 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6310, Main Rotor Control.

(e) Unsafe Condition

This AD was prompted by new and more restrictive airworthiness limitations. The FAA is issuing this AD to prevent failure of certain parts, which if not addressed, could result in subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Action

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0067, dated April 13, 2022 (EASA AD 2022–0067).

(h) Exceptions to EASA AD 2022–0067

(1) Where EASA AD 2022–0067 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the requirements specified in paragraphs (1), (2), (4), and (5) of EASA AD 2022–0067.

(3) Where paragraph (3) of EASA AD 2022–0067 specifies ''Within 12 months after the effective date of this AD, revise the approved AMP,'' this AD requires replacing that text with ''Within 30 days after the effective date of this AD, revise the airworthiness limitations section of your existing helicopter maintenance manual or instructions for continued airworthiness and your existing approved maintenance or inspection program, as applicable.''

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0067 is on or before the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0067, or within 30 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0067.

(i) Provisions for Alternative Actions and Intervals

No alternative actions and associated thresholds and intervals, including life limits, are allowed for compliance with paragraph (g) of this AD unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0067.

(j) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (206) 231–3536; email *joe.salameh@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0067, dated April 13, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0067, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.*

Issued on March 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–04953 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0139]

RIN 1625–AA87

Security Zone; Cooper River, Charleston County, SC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent security zone for certain waters of the Cooper River between Charleston and Mount Pleasant, SC. This action is necessary to provide for the security and protection of life on navigable waters near the

Arthur Ravenel Jr. Bridge during the annual Cooper River Bridge Run. This proposed rulemaking would prohibit persons and vessels from entering the security zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 10, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0139 using the Federal Decision-Making Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Thomas J. Welker, Waterways Management Division, U.S. Coast Guard; telephone 843–740–3186, email *Thomas.J.Welker@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
NOE Notice of Enforcement
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Cooper River Bridge Run is a long-standing 10–K race held annually with over 40,000 participants crossing the Arthur J. Ravenel Bridge over the Cooper River from Mount Pleasant, SC to Charleston, SC. Restricting access to waters around the Cooper River in the vicinity of the event has historically been addressed by the use of special local regulations or temporary final regulations establishing a security zone. With the exception of 2020, the Cooper River Bridge Run has occurred in the same location since 2006 and is anticipated to continue on an annual basis for the foreseeable future. Issuing individual regulations for this event each year would create unnecessary administrative costs and burdens.

The purpose of this rulemaking is to ensure the safety of persons and vessels before, during, and after the scheduled race It would also reduce administrative overhead while ensuring accurate, timely, and consistent notification of this recurring security zone. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70051 and 70124.

III. Discussion of Proposed Rule

The COTP is proposing to establish a permanent security zone enforced annually for one day in March or April for a period of approximately three hours. The security zone would cover all navigable waters encompassed within the following points beginning at 32°48′32″ N, 079°56′08″ W, thence east to 32°48′20″ N, 079°54′18″ W, thence south to 32°47′20″ N, 079°54′29″ W, thence west to 32°47′20″ N, 079°55′28″ W, thence north to origin. All coordinates are in accordance with the 1984 World Geodetic System (WGS 84). The duration of the zone is intended to ensure the security and protection of life before, during, and after the scheduled event. No vessel or person would be permitted to enter, transit through, anchor in or remain within the security zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on: (1) the security zone would only be enforced for a total of approximately 3 hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they would be able operate in the surrounding areas during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative; and (4) the Coast Guard will provide advance notification of the zone to the local maritime community by Marine Safety Information Bulletin, Broadcast Notice to Mariners, or by on-scene designated representatives.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a security zone lasting approximately 3 hours that would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area of the Cooper River surrounding the Arthur Ravenel Jr. Bridge over the Cooper River in Charleston County, South Carolina. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0139 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

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

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

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.139 to read as follows:

§ 165.139 Security Zone; Cooper River, Charleston County, South Carolina.

(a) *Location.* The following area is a security zone: All waters of the Cooper River, and Town Creek Reaches encompassed within the following points: beginning at 32°48′32″ N, 079°56′08″ W, thence east to 32°48′20″ N, 079°54′18″ W, thence south to 32°47′20″ N, 079°54′29″ W, thence west to 32°47′20″ N, 079°55′28″ W, thence north to origin. All coordinates are in accordance with the 1984 World Geodetic System (WGS 84).

(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 (COTP) Charleston in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel will be permitted to enter, transit, anchor, or remain within the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 843–740–7050 or via VHF radio on channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* (1) This section will be enforced for approximately 3 hours on one day in March or April.

(2) Notifications of enforcement date and times will be announced via one or more of the following methods: Notice of Enforcement published in the **Federal Register**, local notice to mariners, marine safety information bulletin, broadcast notice to mariners, or by on-scene designated representatives.

Dated: February 28, 2024.

F.J. DelRosso,

Captain, U.S. Coast Guard, Captain of the Port Sector Charleston.

[FR Doc. 2024–05089 Filed 3–8–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 8 and 20

RIN 2900–AR32

Clarification of VA's Processing of Survivors Benefits Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning survivors benefits claims. With respect to claims processing, VA proposes to clarify that, if VA determines that a surviving spouse or child is eligible for dependency and indemnity compensation (DIC), VA would concurrently deny the co-existing claim for survivors pension, except where paying survivors pension would be more beneficial to the claimant, which would only be the case if the claimant is the veteran's surviving spouse and the claimant's application indicates that the claimant does not have any dependents, is currently in a nursing home, and has applied for or is currently receiving Medicaid. The intended effect of this rulemaking is to streamline and improve the timeliness of the adjudication of claims processing for VA survivors benefits while ensuring that claimants receive the greatest benefit allowed by law.

DATES: Comments must be received on or before May 10, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov*. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at *Regulations.gov*, under RIN–2900–AR32.

FOR FURTHER INFORMATION CONTACT: Eric Baltimore, Management and Program Analyst, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (202) 632–8863 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: A surviving spouse or child of a Veteran may apply for any of several survivors benefits including DIC, survivors pension, and/or accrued benefits. *See* 38 U.S.C. 5101(b)(1). VA is required to address and make a decision on each benefit, irrespective of claimant intent, whenever a surviving spouse or child submits a claim for DIC, survivors pension, and/or accrued benefits on VA Form 21P–534 or 21P–534EZ. This proposed rule would only address VA's processing of the survivors pension claims of surviving spouses and children whom VA has determined are eligible for DIC. VA is not proposing to change its processing of survivors pension claims in cases in which the claimant is ineligible for DIC. Nor is VA proposing to change its processing of accrued benefits claims.

DIC and survivors pension provide a basic rate of payment with increases where (1) the survivor is in need of regular aid and attendance, (2) the survivor is permanently housebound, or (3) the surviving spouse has custody of the veteran's minor child(ren), and, in each instance, the DIC rate exceeds the maximum annual pension rate. *Compare* 38 U.S.C. 1311 (providing the DIC rates for surviving spouses) *and* 1313 (providing the DIC rates for children), *with* 38 U.S.C. 1541 (providing the survivors pension rates for surviving spouses) *and* 1542 (providing the survivors pension rates for children). Because DIC and survivors pension are not payable concurrently, 38 U.S.C. 1317(a), once VA finds the survivor eligible for DIC, specific factual findings with respect to survivors pension will not result in VA paying additional benefits to that survivor.

''VA possesses a duty not only to individual claimants, but to the effective functioning of the veterans [benefits] system as a whole.'' *Veterans Justice Grp., LLC* v. *Sec'y of Veterans Affairs,* 818 F.3d 1336, 1354 (Fed. Cir. 2016). Recipients of VA's survivors benefits—especially survivors pension—are some of VA's most vulnerable beneficiaries. Most beneficiaries who receive survivors pension are elderly widows or widowers who just lost their spouse's household income and have income below the maximum annual pension rate of $11,102 (surviving spouse with no dependents effective December 1, 2023), established by Congress for entitlement to VA survivors pension. VA believes this population is best served by VA focusing its adjudication resources in the areas more likely to result in benefits flowing to survivors. To this end, VA proposes to amend 38 CFR 3.152 to specifically state the general rule that a grant of DIC would result in the automatic denial of survivors pension, to ensure that a surviving spouse or child would receive the greater benefit more quickly.

VA acknowledges its statutory obligation to ''decide all questions of law and fact necessary to a decision by [VA] under a law that affects the provision of benefits by [VA] to veterans or the dependents or survivors of veterans.'' 38 U.S.C. 511(a). A ''decision'' either grants or denies the

benefit sought. *Maggitt* v. *West,* 202 F.3d 1370, 1376 (Fed. Cir. 2000). With respect to claims for DIC and survivors pension, Congress has provided a general rule of decision by statute, stating that no person eligible for DIC shall be eligible for survivors pension. 38 U.S.C. 1316(b), 1317(a). Therefore, once VA finds eligibility for DIC, there are no additional findings of law or fact necessary to decide the claim for survivors pension. The survivor's eligibility for DIC itself precludes eligibility for survivors pension. VA proposes to amend §§ 3.5(c) and 3.152(b)(1) to clarify this point.

VA also recognizes that Congress has enacted an exception to the rule provided in 38 U.S.C. 1317(a), permitting a surviving spouse who is eligible for DIC to nonetheless receive survivors pension in certain circumstances. 38 U.S.C. 1317(b). VA proposes to amend §§ 3.5 and 3.152 to account for this exception as well. For context, 38 U.S.C. 1317(a) states, in relevant part, ''[e]xcept as provided in subsection (b), no person eligible for [DIC] by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under . . . provisions of law administered by the Secretary providing for the payment of . . . death pension.'' Because survivors pension is only payable to surviving spouses and children of wartime veterans, this restriction on payment of survivors pension to someone eligible for DIC only affects those individuals. The exception states that ''[a] surviving spouse who is eligible for [DIC] may elect to receive death pension instead of such compensation.'' 38 U.S.C. 1317(b). When considered in isolation, subsection (b) appears to create an unfettered right of election for surviving spouses, which would mean that the general rule only applies to children. Yet, of the 259,462 surviving spouses and children receiving DIC at the time the exception was enacted, less than nine percent were children. More than 91 percent were surviving spouses. Because ''it is hard to even imagine a rational statutory exception that is intentionally designed to swallow the rule,'' *AFGE* v. *Trump,* 318 F. Supp. 3d 370, 434 (D.D.C. 2018), *vacated on other grounds by* 929 F.3d 748, 761 (D.C. Cir. 2019)), ''[i]n construing provisions . . . in which a general statement of policy is qualified by an exception, [courts] usually read the exception narrowly in order to preserve the primary operation of the provision.'' *Comm'r* v. *Clark,* 489 U.S. 726, 739 (1989) (citing *Phillips, Inc.* v. *Walling,* 324 U.S. 490, 493 (1945)). Therefore, we turn to legislative history for further insight into congressional intent. *See Reid* v. *Department of Commerce,* 793 F.2d 277, 282 (Fed. Cir. 1986) (''resort[ing] to legislative history to ascertain the intent of Congress'' when ''a literal reading of the statute'' ''would lead to a result at variance with the policy of the legislation as a whole'').

The legislative history discusses a surviving spouse's election of survivors pension solely in terms of cost savings for the Federal Government. *See* Public Law 103–446, sec. 111 (captioned ''Cost-Savings Provisions''). As stated previously, the applicable DIC rate always exceeds the maximum annual pension rate. Therefore, looking only at the monthly benefit payments, the default rule that a person eligible for the greater benefit is ineligible for the lesser benefit would increase costs. From that perspective, it would appear that permitting any surviving spouse to elect the lesser benefit would yield the most cost savings. However, VA's costs are not limited to benefit payments. VA also incurs adjudication-related costs. The default rule in section 1317(a) reduces adjudication costs because VA only has to adjudicate entitlement to the lesser benefit if the claimant is ineligible for the greater benefit. Cost savings can only be realized through an election provision if enough claimants actually elect the lesser benefit that the aggregate reduction in benefit payments actually exceeds the additional administrative costs associated with the adjudication of entitlement to the lesser benefit.

Yet, the Court of Appeals for Veterans Claims has recognized the high improbability that a claimant would intentionally seek less than the maximum benefit. *AB* v. *Brown,* 6 Vet. App. 35, 38 (1993) (''the claimant will generally be presumed to be seeking the maximum benefit allowed by law and regulation''). Further, it is very unlikely that Congress established section 1317(b) for the purpose of allowing claimants to elect the lesser benefits where doing so is contrary to their own interests.

Nonetheless, the legislative history does identify one situation in which the payment of survivors pension would result in more funds actually ending up in the hands of the claimant, while at the same time yielding cost savings to the Federal government: if a surviving spouse who has no dependents is receiving nursing home care paid for by a joint Federal and state program known as Medicaid. If an individual does not have dependents, Medicaid will not pay for the individual's nursing home care unless all of the individual's income is first used toward the nursing home costs. As a result, if VA pension constitutes countable income for Medicaid purposes, the VA pension program is essentially paying for nursing home care that would otherwise be paid for by Medicaid. Recognizing this, in 1990, Congress enacted a provision providing pension payments at $90.00 per month for Veterans who have no dependents and are receiving nursing home care at Medicaid expense. H.R. Rep. No. 101–964, at 982–83 (1990). Congress also made clear that the $90.00 per month was not countable income for Medicaid purposes, which provided an incentive for Veterans to elect the pension benefit.

In 1992, Congress extended the same policy to surviving spouses. Veterans Benefits Act of 1992, Public Law 102–568, sec. 601(a). However, the statutory bar in 38 U.S.C. 1317(a) against eligibility for survivors pension when an individual was eligible for DIC limited the cost savings to the Federal Government, because it required VA to pay DIC rather than the protected pension benefit. To address this, in 1994, Congress enacted 38 U.S.C. 1317(b) as a cost-saving measure, enabling surviving spouses to elect survivors pension in lieu of DIC. H.R. Rep. No. 103–669, at 11. A surviving spouse who has no dependents and requires nursing home care and who receives DIC would have to use all the DIC for nursing home care costs before Medicaid coverage would apply. A surviving spouse requiring nursing home care may, instead, choose to elect survivors pension to receive $90.00 per month, which is not countable income for Medicaid purposes, in addition to receiving Medicaid coverage. As a result, the surviving spouse's nursing home care costs would be covered more by Medicaid and less by VA and the Federal Government.

VA acknowledges that the text of section 1317(b) is not expressly limited to the circumstance involving a surviving spouse who has no dependents and requires nursing home care paid by Medicaid or with an application pending with Medicaid for such care. However, the only fact pattern addressed in legislative history materials produced during the conference report stage was that involving surviving spouses who do not have any dependents and who are receiving nursing home care paid by Medicaid, *see* H.R. Rep. No. 103–669 at 11; *see* 140 Cong. Rec. 11355 (daily ed. Oct. 7, 1994) (joint explanatory statement) (''This would permit surviving spouses who are in Medicaid-covered nursing homes and who receive

DIC to elect to receive death pension, in order to be able to retain $90 of their monthly benefits''). ''The conference report stage is closest to final passage and is generally thus the best indicator of legislative meaning apart from the statute itself.'' *Disabled in Action of Metro. New York* v. *Hammons,* 202 F.3d 110, 125 (2d Cir. 2000).

Moreover, VA is unaware of a comparable fact pattern in which a lesser VA benefit may result in a greater aggregate recovery for a claimant. As noted above, Congress established in section 1317(a) a general rule that entitlement to DIC precludes entitlement to survivors pension, and the exception in section 1317(b) was enacted to address a narrow situation, in which the exception serves both to maximize VA payments to the claimant and to limit Federal expenditures that would otherwise be diverted to third parties. VA believes that applying the exception only to those cases involving a surviving spouse who has no dependents and requires nursing home care paid by Medicaid or with an application pending Medicare for such care best balances the goals of section 1317(a) and (b), and best serves VA claimants by avoiding the unnecessary case-specific and systemic delays and the Federal expenditures that would result from developing and deciding pension claims that would not maximize VA benefits to claimants.

Therefore, VA interprets section 1317(b) as applying only in the circumstance involving a surviving spouse who has no dependents and requires nursing home care paid by Medicaid or with an application pending with Medicaid for such care. Because survivors pension would be the better benefit for the surviving spouse when a surviving spouse with no dependents is receiving nursing home care paid by Medicaid, VA would automatically grant survivors pension, provide a formal rating decision denying DIC, and inform the surviving spouse why VA is granting survivors pension. If VA grants a surviving spouse survivors pension in lieu of DIC as the more advantageous benefit, the surviving spouse is not barred from reapplying for and receiving DIC in the event the surviving spouse becomes ineligible for survivors pension at the rate provided for in 38 U.S.C. 5503(d). In that circumstance, if the surviving spouse's application were received within one year of the date on which Medicaid-covered nursing home care ended, VA would deem the application to have been received on the date that Medicaid covered nursing home care ended and DIC benefits would be effective as of the calendar month after Medicaid-covered nursing home care ended. Otherwise, DIC benefits would not be effective earlier than the date VA receives the claim. Similarly, if a surviving spouse who, but for receipt of DIC, would be eligible for survivors pension begins receiving Medicaid-covered nursing home care, the surviving spouse would not be barred from reapplying for and receiving survivors pension at the rate provided for in section 5503(d). In that circumstance, the effective date of survivors pension would be based on the date of claim for survivors pension and the date DIC payments were discontinued. VA proposes to amend §§ 3.402 and 3.502(f) to address this change.

Furthermore, it is not VA's intent to eliminate a survivor's opportunity to claim more than one benefit on a single form—rather it is to reduce the administrative burden for both VA and the claimant and to expedite the delivery of benefits to survivors. If VA determines that the claimant is the veteran's surviving spouse or child, but that the veteran's death does not entitle the veteran's survivor to DIC, *see* 38 U.S.C. 1310, 1318, VA will decide the additional questions of fact or law necessary to grant or deny survivors pension. Similarly, where VA determines that the claimant is the veteran's surviving spouse and the veteran's death entitles the veteran's survivors to DIC, VA will determine whether, but for DIC entitlement, the surviving spouse would be entitled to survivors pension at the rate provided for in 38 U.S.C. 5503(d). In addition, in all cases, VA will provide notice of its decision with respect to DIC and survivors pension in accordance with 38 U.S.C. 5104, including any favorable findings that were necessary to those decisions and provide such decision notification in writing to the claimant and his or her representative, if applicable.

Therefore, VA proposes to amend §§ 3.5(c), 3.152(b)(1) and 3.702(d)(2) to clarify VA's authority to pay the higher or better benefit between DIC and survivors pension. The intended effect of this amendment is to streamline and improve the timeliness of the adjudication of claims processing for VA survivor benefits and deliver decisions on claimed benefits and services more timely to beneficiaries in need and during a difficult time.

VA also proposes to replace the term ''death pension'' with the term ''survivors pension'' each place it appears in VA's implementing regulations. This will ensure that the language of VA's implementing regulations aligns with current usage. Also, VA proposes to replace the words ''or compensation'' with ''or death compensation'' each place they appear in VA's implementing regulations.

Executive Orders 12866, 13563 and 14094

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

Paperwork Reduction Act

Although this proposed rule contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for § 3.152 is currently approved by the Office of Management and Budget and has been assigned OMB control number 2900–0004.

VA's proposed changes would not result in a reduction of an information collection burden. A surviving spouse or child applies for both DIC and survivors pension using a single form. While some of the information solicited by the form is pertinent to either benefit (*e.g.,* the claimant's relationship to the veteran and information regarding the veteran's service), other information is specific to one benefit (*e.g.,* income and asset information with respect to survivor's pension). Pursuant to this rulemaking, if VA grants DIC to a

surviving spouse who is not eligible for the exception under 38 U.S.C. 1317(b), or to a child, VA would be able to adjudicate the application for survivors pension without making specific factual findings regarding income and net worth because the claimant's entitlement to DIC would itself be a bar to entitlement to survivor's pension. Conversely, if VA denies DIC or if the surviving spouse had potential eligibility for the exception under 38 U.S.C. 1317(b), VA would have a legal obligation to solicit income and net worth information from the claimant. *Isenhart* v. *Derwinski,* 3 Vet. App. 177, 179–80 (1992). Yet, whether that information would be necessary to the adjudication of the application would only be known after VA makes a determination regarding eligibility for DIC. Considering VA's duties to individual claimants as well as the functions of the benefits system as a whole, VA believes that continuing to collect information pertinent to survivors pension entitlement at the time a surviving spouse or child applies for DIC would promote streamlined claims processing and reduce the likelihood that claimants would be subject to multiple, separate requests for information.

Regulatory Flexibility Act

The Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. There are no small entities involved with the process and/or benefits associated with this rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 8

Life insurance, Military personnel, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on March 1, 2024, 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.

Michael P. Shores,

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

For the reasons set forth in the preamble, VA proposes to amend 38 CFR chapter 1 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.5 by revising paragraph (c) to read as follows:

§ 3.5 Dependency and indemnity compensation.

* * * * *

(c) *Exclusiveness of remedy.* (1) Except as provided in paragraph (c)(2) of this section, no person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for survivors pension or death compensation under any other law administered by the Department of Veterans Affairs.

(2) A surviving spouse who, but for the surviving spouse's eligibility for dependency and indemnity compensation, would be eligible to receive survivors pension at the rate provided for in 38 U.S.C. 5503(d) will receive survivors pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

* * * * *

■ 3. Amend § 3.152 by:

■ a. Redesignating paragraph (b)(1) as paragraph (b)(1)(i); and

■ b. Adding paragraph (b)(1)(ii).

The addition reads as follows:

§ 3.152 Claims for death benefits.

* * * * *

(b)(1)(i) * * *

(ii)(A) Except as provided in paragraph (b)(1)(ii)(B) of this section, an award of dependency and indemnity compensation to a surviving spouse or child will result in the denial of survivors pension.

(B) With respect to a claim by a surviving spouse, if the evidence establishes that, but for the surviving spouse's eligibility for dependency and indemnity compensation, the surviving spouse would be eligible to receive survivors pension at the rate provided for in 38 U.S.C. 5503(d), survivors pension will be paid instead of such compensation.

(Authority: 38 U.S.C. 1317)

* * * * *

■ 4. Amend § 3.402 by adding paragraph (d) to read as follows:

§ 3.402 Surviving spouse.

* * * * *

(d) *Medicaid-covered nursing home care.* (1) If a surviving spouse spouse described in § 3.152(b)(1)(ii)(B) stops receiving Medicaid-covered nursing home care, dependency and indemnity compensation, if otherwise in order, will be effective as of the date Medicaid coverage ceased, if a claim for dependency and indemnity compensation is received within one year of the date Medicaid coverage ceased; otherwise, it will be effective as of the date of receipt of claim or date entitlement arose, whichever is later.

(2) If a surviving spouse who is receiving dependency and indemnity compensation and who, but for eligibility for dependency and indemnity compensation, would be eligible for survivors pension, begins receiving Medicaid-covered nursing home care, survivors pension will be effective as of the first day of the month after dependency and indemnity compensation was discontinued, if a claim for survivors pension is received within one year of the date dependency and indemnity compensation was discontinued; otherwise, it will be effective as of the date of receipt of claim or date entitlement arose, whichever is later.

■ 5. Amend § 3.502 by revising the paragraph heading of paragraph (f) to read as follows:

§ 3.502 Surviving spouses.

* * * * *

(f) *Medicaid-covered nursing home care.* * * *

* * * * *

§ 3.658 [Amended]

■ 5. Amend § 3.658 by, in paragraph (b), removing the words ''or compensation'' and adding, in their place, the words ''or death compensation''.

■ 6. Amend § 3.702 by revising paragraph (d) to read as follows:

§ 3.702 Dependency and indemnity compensation.

* * * * *

(d)(1) Except as noted in paragraphs (d)(2) and (g) of this section, an election to receive dependency and indemnity compensation in lieu of death compensation is final, and the claimant may not thereafter reelect death compensation in that case. An election is final when the payee (or the payee's fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

(2) A surviving spouse's receipt of survivors pension at the rate provided for in 38 U.S.C. 5503(d) in lieu of dependency and indemnity compensation will not be a bar to the surviving spouse's receipt of such compensation in the event the surviving spouse becomes ineligible for survivors pension at the rate provided for in 38 U.S.C. 5503(d).

* * * * *

■ 7. Amend part 3, by removing the words ''death pension'', wherever it appears, and adding, in their place, the words ''survivors pension''.

PART 8—NATIONAL SERVICE LIFE INSURANCE

■ 8. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

§ 8.4 [Amended]

■ 9. Amend § 8.4, in the introductory text and paragraph (b), by removing the words ''death pension'' and adding, in their place, the words ''survivors pension''.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 10. The authority citation for part 20 continues to read as follows:

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

§ 20.104 [Amended]

■ 11. Amend § 20.104, in paragraph (a)(4), by removing the words ''death pension'' and adding, in their place, the words ''survivors pension''.

[FR Doc. 2024–04895 Filed 3–8–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 240304–0067]

RIN 0648–BM26

Confidentiality of Information

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

ACTION: Proposed rule, request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes revisions to existing regulations governing the confidentiality of information submitted in compliance with any requirement or regulation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; MSA). The purposes of these revisions are to make both substantive and non-substantive changes in light of amendments to the MSA under the 1996 Sustainable Fisheries Act (SFA) and the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and amendments to the High Seas Driftnet Fishing Moratorium Protection Act (FMPA) under the 2015 Illegal, Unreported and Unregulated Fishing Enforcement Act (IUU Fishing Act). NMFS proposes additional revisions necessary to address some issues that concern its application of the MSA confidentiality of information requirements to information requests.

DATES: Comments on this proposed rule must be received on or before April 25, 2024.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–HQ–2023–0146, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–HQ–2023–0146, in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and NMFS will post them for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic Access: Information relevant to this proposed rule, which includes a regulatory impact review and a Regulatory Flexibility Act certification, is accessible via the internet at: *https://www.regulations.gov/docket/NOAA-HQ-2023-0146.*

FOR FURTHER INFORMATION CONTACT: Karl Moline at (301) 427–8225 and via Email: *NMFS.MSA_C@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The MSA authorizes the Secretary of Commerce (Secretary) to regulate domestic fisheries, seaward of States to the seaward limit of the U.S. Exclusive Economic Zone (EEZ). *See* 16 U.S.C. 1811, 1802(11) (further explaining United States sovereign rights to fish and fishery management authority and defining EEZ). NMFS implements and administers the MSA through authority delegated from the Secretary. Conservation and management of fish stocks is accomplished through Fishery Management Plans and plan amendments (collectively, FMPs) and implementing regulations. To assist in the fishery management process, eight regional fishery management councils (Councils) prepare FMPs for fisheries within specified geographic areas and submit them to NMFS. Id. 1853. NMFS directly prepares and amends the FMP for highly migratory species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Id. 1852(a)(3), 1854(g). For any FMPs that it approves, NMFS promulgates regulations to effectuate them.

Information collection is an essential part of the fishery management process. Conservation and management measures in FMPs and in their implementing regulations must be based

on the best scientific information available (see National Standard 2, 16 U.S.C. 1851(a)(2)). Under section 303(a)(5) of the MSA, any FMP must specify the pertinent information to be submitted to the Secretary with respect to commercial, recreational, or charter fishing, and fish processing in the fishery. Id. 1853(a)(5). In addition, section 303(b)(8) provides that an FMP may require that one or more observers be carried onboard a vessel for the purpose of collecting data necessary for the conservation and management of the fishery. Id. 1853(b)(8).

The MSA sets forth confidentiality of information requirements at section 402(b), 16 U.S.C. 1881a(b). Under the MSA as amended, the Secretary must maintain the confidentiality of any information that a person is required to submit in compliance with any regulation or requirement under the Act and any observer information. The MSA defines person ''as any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.'' Id. at 1802(36). ''Observer information'' is defined as ''any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to an authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety location, or operating condition observation), and video, audio, photographic, or written documents.'' Id. at 1802(3)(32).

The MSA includes exceptions to these confidentiality requirements. Some exceptions allow for access to confidential information by specified entities provided that these parties treat the information as confidential, while other exceptions allow for the release of information without restrictions. In addition, the MSA authorizes the Secretary to disclose information that is subject to the Act's confidentiality requirements in ''any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information.'' Id. at 1881a(b)(3). As discussed below, after finalization of this rule, NOAA intends to rescind NOAA Administrative Order (NAO) 216–100 that outlines the current internal control procedures for confidential information. NMFS will replace the NAO with new internal control procedures that apply to the collection and maintenance of, and access to and release of, any confidential information. NMFS will make these procedures available to the public.

NMFS also notes that the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (IUU Fishing Act), Public Law 114–81 101(b) (Nov. 5, 2015), amended the High Seas Driftnet Fishing Moratorium Protection Act (FMPA) to include provisions at 16 U.S.C. 1826i and 1826g related to MSA confidential information. NMFS implements and administers the FMPA through authority delegated from the Secretary. Under section 1826i(b)(1), the Secretary is authorized to disclose information collected under joint authority of the MSA and another statute that implements an international fishery agreement (IFA), such as the Atlantic Tunas Convention Act of 1975, *id.* at 971 *et seq.,* to specified governmental bodies if certain conditions are satisfied. Section 1826i(b)(2) provides that the confidentiality requirements of the MSA are not applicable to information sharing obligations of the United States under a Regional Fishery Management Organization to which the United States is a member and to information collected from foreign fishing vessels. Section 1826g, the enforcement section of the FMPA, includes the same text as in section 1826i(b)(2). In addition, section 1826g allows for disclosure of information to the same governmental bodies in section 1826i(b)(1) and a foreign government, if necessary for specified compliance and enforcement purposes.

Section 402(b)(3) of the MSA provides that the ''Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act.'' Id. 1881a(b)(3). Accordingly, NMFS has promulgated confidentiality regulations, which are set forth at 50 CFR part 600, subpart E. Certain terms used in these regulations are defined under 50 CFR part 600, subpart A. NMFS last revised the regulations under subpart E in February 1998 (63 FR 7075, February 12, 1998). The revisions were non-substantive.

On May 23, 2012, NMFS published a proposed rule (77 FR 30486) with substantive and clarifying revisions to the confidentiality of information regulations at subpart E and provided for public comment on that proposed rule through August 21, 2012 (77 FR 35349, June 13, 2012). Following public comment, on January 13, 2017, NMFS issued a document withdrawing the proposed rule (82 FR 4278). In that document, NMFS stated that it would like to reevaluate those proposed revisions to the regulations.

NMFS has reevaluated the need for revised confidentiality regulations and determined that updates to the regulations at 50 CFR part 600 subparts A, B, and E are warranted. Updates and clarifications would be helpful in light of amendments made under the 1996 SFA, 2006 MSRA, 2015 IUU Fishing Act and other changes in law. Additionally, NMFS proposes changes to improve the effectiveness of, and address inefficiencies in, its current procedures for maintaining the confidentiality of information and the collection, transmission, management and dissemination of fisheries data. Given that the regulations were last revised in 1998, they do not address recent methods of collecting observer information through electronic monitoring systems (*e.g.,* imagery and video). NMFS intends to update and modernize its regulatory framework for protection of confidential information to reflect advances in the methods available to evaluate, summarize, display, and release data.

As identified in table 1, this proposed rule, if adopted, would reorganize and relabel headers in 50 CFR part 600 subpart E as follows:

TABLE 1—CURRENT STRUCTURE OF 50 CFR PART 600 SUBPART E AND PROPOSED REDESIGNATIONS

Current headings and order of sections	Proposed new headings and order
Subpart E Confidentiality of statistics	Confidentiality of information
§ 600.405 Types of statistics covered	Applicability.
§ 600.410 Collection and maintenance of statistics	Protection of confidential information.
§ 600.415 Access to statistics	Access to confidential information.
§ 600.420 Control system	Release of confidential information.

TABLE 1—CURRENT STRUCTURE OF 50 CFR PART 600 SUBPART E AND PROPOSED REDESIGNATIONS—Continued

Current headings and order of sections	Proposed new headings and order
§ 600.425 Release of statistics	Release of information in aggregate or summary form.

II. Proposed Changes Addressing the Expanded Scope of the MSA Confidentiality Requirements

When the Fishery Conservation and Management Act (MSA precursor) was enacted, its confidentiality requirements applied to ''[a]ny statistics submitted to the Secretary''. Public Law 94–265, Title III, 303(d) (1976). Congress broadened the confidentiality requirements through the SFA, Public Law 104–297 (1996) by substituting the word ''information'' for ''statistics.'' Accordingly, NMFS' proposed rule, if adopted, would update the confidentiality regulations under 50 CFR part 600 to reflect the change from ''statistics'' to ''information''.

This proposed rule would also update regulations consistent with the 2006 MSRA, Public Law 109–479 (2007). Prior to the 2006 MSRA, the confidentiality requirements applied only to information submitted to the Secretary in compliance with any requirement or regulation under the Magnuson-Stevens Act. The 2006 MSRA amended the confidentiality requirements at section 402(b) of the Magnuson-Stevens Act, 16 U.S.C. 1881a(b), to include information submitted to a state fishery management agency or a Marine Fisheries Commission in compliance with a requirement or regulation under the Act. Public Law 109–479, Title II 203. The 2006 MSRA also amended the confidentiality requirements to apply to any observer information, which is now defined under section 3(32) of the Magnuson-Stevens Act, 16 U.S.C. 1802(3)(32).

In light of these amendments to the scope of the MSA confidentiality requirements, NMFS proposes making the following changes to its regulations. NMFS believes that these proposed changes, if adopted, would improve the effectiveness of its administration of the MSA confidentiality requirements.

1. Replace the term ''statistics'' with ''information'' in § 600.130 and all regulations under 50 CFR subpart E;

2. Delete the definition of ''confidential statistics'' and add a definition for ''confidential information'' (§ 600.10). Under this proposed rule, confidential information would be defined to include any observer information as defined under 16 U.S.C. 1802(32) or any information submitted to the Secretary, a state fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the MagnusonStevens Act. As explained further below in section IV, NMFS proposes that confidential information be explicitly defined to not include the following observer information related to interactions with species protected under the Marine Mammal Protection Act: the date, time, and location of interactions, the type of species, and the fishing practices and gear involved provided that information regarding fishing practices and gear would not constitute a trade secret under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). As explained further below in section III, to implement the FMPA as amended, confidential information would be defined to not include fishing effort, catch information and other forms of vessel-specific information that the United States must provide to a Regional Fishery Management Organization (RFMO) to which the United States is a member in order to satisfy any information sharing obligations of the respective RFMO. Confidential information would also not include any information collected by NMFS under the MSA regarding foreign vessels.

3. Add to the general prohibitions under § 600.725 that it is unlawful for any person to use or disclose confidential information without authorization. NMFS would enforce that prohibition through a civil enforcement action as authorized under MSA 308(a), 16 U.S.C. 1858(a).

4. Rename and replace procedures at § 600.410, ''collection and maintenance of statistics'' with new internal procedures for protection of confidential information. These new procedures, which are described below, would specify confidentiality of information requirements for information collected by NMFS, a State fisheries management agency, a Marine Fisheries Commission (Commission), and companies that provide services to collect and/or process observer information. (§ 600.410(b)).

Confidential Information Collected by NMFS (§ 600.410(b))

This new subsection would require NMFS to develop new internal procedures that apply to the maintenance of, and access to and release of, any confidential information. NMFS' current internal control procedures for confidential information are codified at § 600.415(a) and § 600.420 and in NOAA Administrative Order (NAO) 216–100. These regulatory procedures are outdated, inefficient, and redundant. Further, it is not necessary to document non-regulatory internal control procedures in the Code of Federal Regulations. Accordingly, NMFS proposes to remove § 600.415(a), which provides procedures for determining whether to grant a request to access confidential data, and § 600.420, which provides procedures to maintain the confidentiality of identifying information in such data. In addition, NMFS proposes to rescind NAO 216–100 which further details NMFS' policies and procedures for access to and maintenance of confidential data. NMFS proposes to replace the regulatory procedures under § 600.415(a) and § 600.420, and the policies and procedures in NAO 216–100, with updated control procedures. Specifically, under this proposed rule, NMFS would be required to establish internal control procedures for maintenance of and access to any confidential information that satisfy the requirements that are proposed under § 600.410(b). NMFS will make these procedures available to the public and distribute them to NMFS Regional Offices and Science Centers, as well as to Fishery Management Councils, states, commissions, and any other partner organizations that may manage confidential information. There may be a need for NMFS, Regional Offices or Science Center to develop internal control procedures that are only applicable to a specific region, data collection program, and/or fishery. Again, NMFS will make these procedures available to the public.

Confidential Information Collected by State Fishery Management Agencies or Marine Fisheries Commissions (§ 600.410(c))

This new subsection would revise and expand a procedure that allows collection of confidential information by a state or Commission. Under the proposed procedure, NMFS may enter into an agreement with a state for the

collection of confidential information by the state on behalf of the Secretary if NMFS determines that the state has authority comparable to the MSA for the protection of information and that the state will exercise such authority to protect confidential information. In addition, NMFS could enter into such an agreement with a Marine Fisheries Commission if NMFS determines that the Commission has policies and procedures comparable to the MSA for the protection of information and that the Commission will apply them to protect confidential information.

Protection of Confidential Information Collected and/or Processed by Observer Information Services

Observer Providers (§ 600.410(d))

At present, all at-sea and shoreside observer deployments are staffed by contracting companies referred to as observer providers. Given the role that observer providers have in the collection of observer information—which must be maintained as confidential—NMFS proposes to add a definition of observer provider and establish procedures for the protection of confidential information collected by them. Under this proposed rule, ''observer provider'' would be defined as ''any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under a requirement of the MSA or as part of a cooperative research initiative.'' MSA Section 402(b)(2)(C) prohibits the disclosure of observer information except as authorized by any regulations issued by the Secretary which would allow certain limited dissemination of information between observers, observer employers, and the Secretary pursuant to a confidentiality agreement that prohibits other types of dissemination. Under this authority, NMFS proposes to allow the collection of observer information by an observer provider pursuant to a confidentiality agreement that: (i) specifies procedures that the observer provider will apply to protect confidential information from public disclosure; and (ii) requires that the observer provider, and each observer and each of its other employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information under 16 U.S.C. 1858. In addition, as explained further below, a confidentiality agreement with an observer provider may allow for the sharing of observer information between and among observer providers, and observers, for observer training or preparation of observers for deployments to specific vessels, or to validate the accuracy of the observer information collected.

Electronic Monitoring Service Providers (§ 600.410(d))

Increasingly, fisheries-dependent data are being collected through electronic monitoring systems (EM systems), such as cameras and other hardware systems that monitor vessel operations and fishery catch. Information collected through EM systems—referred to as EM information—is a form of observer information under the MSA, and, therefore, subject to the Act's confidentiality requirements. NMFS may procure services from an EM service provider, or award financial assistance to such companies, for the collection and/or analysis of EM information. Accordingly, to maintain the confidentiality of EM information, NMFS proposes to define ''electronic monitoring service provider'' and establish procedures for the protection of confidential information managed by such entities. The proposed rule would define ''electronic monitoring service provider'' as any person who manages observer information collected by an EM system required under an MSA regulation. Under the proposed rule, NMFS may allow for the management of confidential information by an EM service provider pursuant to a confidentiality agreement that: (i) Specifies procedures that the provider will apply to protect confidential information from public disclosure; and (ii) requires that the electronic monitoring service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information under 16 U.S.C. 1858. A confidentiality agreement between NMFS and an EM service provider may be reflected in the terms and conditions of any NMFS issued contract or financial assistance award.

This procedure would apply only to an EM service provider that is providing services to NMFS under a contract, or performing functions that require the handling of confidential information under a NMFS financial assistance award. In this context, NMFS, as a party to, or the issuer of, the funding instrument can effectuate protection of confidential information. That is not the case for all industry funded EM programs. In some cases, a vessel owner may procure EM services directly with an EM service provider and can effectuate confidentiality protection through their contact with the provider. As noted above, the confidentiality exception at MSA section 402(b)(2)(C) provides for limited dissemination of confidential information between observers, observer employers, and NMFS pursuant to a confidentiality agreement that prohibits other types of dissemination. Because MSA section 402(b)(2)(C) is specific to observer providers, NMFS would apply a different approach to handling confidential information by EM service providers. NMFS believes that this approach is appropriate in programs when a vessel contracts directly with an EM service provider. In these specific EM programs, industry funded EM service providers are responsible for storage and maintenance of the vessel owner's information.

Scope of Subpart E Regulations

In making the above-described changes, the proposed rule would revise § 600.405 to specify that regulations under subpart E apply to confidential information that is under NMFS' custody and control. The MSA provides that ''[a]ny information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed'' except in certain enumerated circumstances. 16 U.S.C. 1881a(b)(1). The MSA further provides that ''[t]he Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act . . .''. Id. at 1881a(b)(3). As such, these regulations are to prescribe procedures to preserve the confidentiality of information: (a) ''submitted'' to the Secretary, a State fishery management agency, or a marine fishery commission; (b) in compliance with a statutory or regulatory requirement; and, (c) the requirement must come from the MSA and not some other source of authority. Accordingly, these regulations do not apply to certain fishery information that collected and submitted voluntarily or pursuant to other authority. These regulations also do not apply in circumstances when information is collected pursuant to a MSA program but not actually submitted to the Secretary, State agency or marine fishery commission.

For information that a person submits to NMFS, a State Fisheries Management Agency, or a State Marine Fisheries

Commission, NMFS will apply the MSA confidentiality requirements only if the submission has a nexus to a collection of information mandated under a statutory or regulatory provision of the MSA. In some instances, NMFS may obtain MSA-required information not through direct reporting requirements, but through collection agreements with states or Commissions. In such cases, NMFS will apply MSA confidentiality to that information because it is submitted in compliance with a requirement of the MSA. However, where there is no underlying MSA requirement and a person voluntarily submits information, NMFS will not apply MSA confidentiality. This would be the case for recreational fishing information collected through state and NMFS- conducted surveys. Because those surveys are voluntary, MSA confidentiality does not apply to information provided in response to them.

Second, these regulations, and any internal control procedures for the protection of confidential information developed pursuant to them, would apply only to information that is within NMFS' custody and control. NMFS will treat information as subject to its custody and control, when it physically obtains the information, which, for electronically submitted information, is when the information enters a NMFS Federal Information Security Management Act domain. Accordingly, MSA confidential information that resides with a State Fisheries Management Agency, or a State Marine Fisheries Commission will not be subject to the procedures to protect the confidentiality of information under these proposed regulations. Rather, recognizing that this information is collected and held by a state government or an interstate compact of state governments, NMFS will continue to work with these entities in a non-regulatory fashion to reach mutual agreement as to how to maintain the confidentiality of information submitted to them pursuant to an MSA requirement. These regulations do not independently apply to third parties (such as observer providers or electronic monitoring service providers) that collect information for NMFS pursuant to a grant, contract, or cooperative agreement. However, NMFS will apply the regulatory provisions as appropriate through individual terms in the relevant grant, contract, or cooperative agreement.

Nothing in these proposed regulations would apply to confidential information that is collected and maintained by an EM service provider that contracts directly with the fishing industry. In the procedural directive ''Information Law Application for Data and Supporting Guidance in Electronic Monitoring Programs for Federally Managed U.S. Fisheries'' (May 10, 2022) (Info Law/EM Programs PD), NMFS stated that because EM information is a form of observer information under the MSA, the confidentiality requirements of the MSA apply to that information. However, because confidential information that is collected and maintained by third parties is not under NMFS' custody and control, it is not subject to these proposed regulations, nor any subsequent internal policies or procedures for the protection of confidential information that NMFS issues to implement these proposed regulations.

These regulations, if adopted, would apply only to information that is required to be submitted, such as vessel catch information, including information collected by an EM service provider that contracts directly with the fishing industry. Any confidential information retained by a third-party EM service provider whether or not submitted to NMFS should be subject to the contractor's procedures for protection of vessel owner information that is subject to the MSA's broader statutory prohibition on the release of observer information. See Info Law/EM Programs PD at II.1B.

III. Proposed Changes Concerning Exceptions to the Confidentiality Requirement

The MSA's confidentiality requirements are also subject to a number of exceptions that apply if certain conditions are satisfied. Some exceptions simply allow NMFS (or others) to disclose information. Other exceptions allow entities to be provided with access to confidential information if certain conditions are satisfied and only if access is subject to a confidentiality agreement. In addition, a provision of the MSA authorizes the Secretary to aggregate or summarize information that is subject to the Act's confidentiality requirements into a non-confidential form ''which does not directly or indirectly disclose the identity or business of any person who submits such information.'' 16 U.S.C. 1881a(b)(3). Non-confidential aggregate or summary form information may be released to the public.

NMFS proposes regulatory changes to address issues that concern application of exceptions to the confidentiality requirements and the aggregation and summarization provision in the MSA. NMFS presents these changes in the following order: First, substantive changes addressing instances where otherwise confidential information may be disclosed without restrictions or treated as non-confidential; second, substantive changes addressing disclosure of aggregated or summarized confidential information; and finally, non-substantive changes regarding the sharing of confidential information with other entities provided that it remains confidential.

A. Proposed Changes Concerning Exceptions to Confidentiality Requirements, Where Information Can Be Disclosed Without Restrictions or Treated as Non-Confidential

The following proposed changes address the MSA confidentiality exceptions for a limited access program, law enforcement, and written authorization for release of information. In addition, the rulemaking proposes to define confidential information as not including information collected from foreign fishing vessels or provided to an RFMO pursuant to section 608 of the FMPA (*see* proposed § 600.10 definitions of *Confidential Information* and *Information sharing obligation of a Regional Fishery Management Organization (RFMO)*). As explained in section II, that proposed definition also provides that observer information on marine mammal interactions is not confidential information.

1. Limited access program (LAP) exception: While MSA section 402(b) generally provides for confidentiality of information, section 402(b)(1)(G) provides an exception for information that is ''required to be submitted to the Secretary for any determination under a limited access program.'' Id. 1881a(b)(1)(G). To facilitate the implementation of this statutory provision, NMFS proposes definitions for the terms ''limited access program'' and ''determination.'' NMFS notes that information subject to the limited access program exception will be considered non-confidential and, as such, could be made available publicly.

Proposed Definition for ''Limited Access Program'' (LAP)

The MSA defines, and has provisions for, a ''limited access system'' (LAS) and ''limited access privilege program'' (LAPP), *see* 16 U.S.C. 1802(26), (27), 1853(b)(6), and 1853a, but does not define a LAP. To develop a proposed definition for that term, NMFS considered what limited access management approaches may necessitate a specific confidentiality exception for disclosure of information that is required to be submitted for

fishery decision-making. NMFS believes the need is most evident for fisheries in which exclusive fishing privileges, such as a portion of a fishery's total allowable catch (TAC), are allocated to persons based on their historical catch, or other applicable historical fishery participation. In these fisheries, generally referred to as ''catch share programs,'' the availability of information that NMFS used or intends to use to allocate exclusive fishing privileges promotes transparency and is integral to pursuit and administration of appeals of such determinations. To this end, NMFS is proposing that LAP be defined to include specific types of programs defined under the MSA, such as section 303A LAPPs and Individual Fishing Quotas as defined at MSA (3)(23). Id. 1853a, 1802(23), (26). It would also include other management programs that allocate exclusive fishing privileges not specifically mentioned in the Act, such as programs that allocate TAC, or a portion of the TAC, to a sector or a cooperative or that grant an exclusive privilege to fish in a geographically designated fishing ground. The Act does not preclude the development of other management programs that are similar to LAPPs but fall outside the section 303A requirements and provisions. Thus, proposed § 600.420(c)(1) includes all of the above in defining ''limited access program'' to mean a program that allocates exclusive fishing privileges, such as a portion of the total allowable catch (TAC), an amount of fishing effort, or a specific fishing area to a ''person'' (as defined by the MSA). This definition is consistent with the NOAA Catch Share Policy, Policy 01–121 (2017), available at *https://media.fisheries.noaa.gov/dam-migration/01-121.pdf.*

Proposed Definition for ''Determination''

Having defined ''limited access program'' consistent with the Agency's policy definition of catch share program, NMFS considered what actions taken thereunder should be subject to a specific confidentiality exception. Here again, what sets catch share programs apart from other fishery management strategies is the exclusive allocation of fishing privileges; thus, NMFS believes that the exception should apply to information that underlies allocations and other subsequent decisions by NMFS that apply to a person's privileges. Accordingly, proposed § 600.420(c)(2) would define ''determination'' to mean a decision that is specific to a person and exclusive fishing privileges held or sought under a limited access program. These decisions are: allocations, approval or denial of a lease or sale of allocated privileges or annual allocation, and end-of-season adjustments. Id. ''Person'' is defined under MSA section 3(36), 16 U.S.C. 1802(3)(36), and a determination that concerns a fishery as a whole, such as an annual catch limit, would not be considered a ''determination under a limited access program.''

Under this approach, participants in catch share fisheries can evaluate and verify the accuracy of information that underlies allocations and make more informed decisions on whether to pursue an appeal of any privileges allocated to them. NMFS believes this approach will also facilitate transparency and accountability in NMFS' administration of catch share programs.

Additional Issues Regarding the Scope of Information Releasable Under the Limited Access Program Exception to the Confidentiality Requirements

Consistent with MSA section 402(b)(1)(G), the proposed rule, if adopted, would allow for release of information required to be submitted for a LAP determination, even if NMFS has not yet made a determination. For example, participants in a LAP may be required to submit information to NMFS for the Agency to determine whether the participants have fished within their allocated privileges. Under the proposed rule, that information could be released even if NMFS has not yet made its determination.

Historical landings or catch information could also be releasable to a potential LAP participant and, as such, the proposed regulation specifies that the releasable information includes ''information that was submitted before the fishery was a LAP and that NMFS subsequently uses or intends to use for a LAP determination.'' For example, a Council could transmit an FMP amendment to NMFS for review that includes a new LAP. If NMFS has not yet determined whether to implement the recommended FMP amendment through the issuance of a final rule in the **Federal Register**, NMFS may decide that releasing such information would be helpful in order to provide sufficient time for vessel owners to verify or correct information that will be used for initial allocations. Conversely, the exception would not be applicable for a Council's consideration of whether to establish a LAP. In that case, there would be insufficient facts that demonstrate NMFS' intent to use historical landings for a determination under a LAP.

When the LAP exception is applicable, NMFS proposes that information be treated as non-confidential at the level used, or that NMFS intends to use, for a limited access program determination. For example, if NMFS uses vessel landings for a given 3-year period for allocations, the aggregated catch across the 3-year period would be subject to disclosure. Conversely, a vessel's yearly, monthly, or trip-by-trip landings would not be subject to the exception because information at that scale was not used for allocation determinations. NMFS further proposes to apply the same approach for any vessel-trip-specific observer information collected for scientific and management purposes that NMFS uses or intends to use for a LAP determination.

NMFS has considered that medical and other personal information may be used for certain determinations under limited access programs and, therefore, could be within the scope of the confidentiality exception contemplated by subparagraph 402(b)(1)(G). For example, such personal information may be required for a determination on whether a person is unable to fish and, therefore, can transfer their privileges to another person. While such information may not be confidential under the explicit MSA statutory prohibition, it may be treated as confidential or non-releasable pursuant to other statutes such as FOIA. In such cases, NMFS would consider whether Exemption Six of the FOIA applies to the information. 5 U.S.C. 552(b)(6). Exemption Six authorizes the withholding of information about individuals in ''personnel and medical files and similar files'' when the disclosure of such information ''would constitute a clearly unwarranted invasion of personal privacy.'' Id. There may be other instances where NMFS applies applicable FOIA or other statutory limitations to information that otherwise may be disclosable under subparagraph 402(b)(1)(G). For example, NMFS may use information on company ownership as part of determining eligibility for allocations or whether a person can transfer their privileges consistent with applicable quota share caps. In such cases, NMFS would consider applying FOIA Exemption Four, which protects confidential business information, as appropriate.

In addition, NMFS notes that non-LAP fisheries may, through appropriate Secretarial action, transition to LAPs. In these situations, information submitted under a non-limited access program

fishery may later be relevant for determinations regarding privileges under a newly established LAPs. For the same reasons discussed above, and to promote efficiency and reduce reporting requirements on the regulated industry, NMFS proposes that information previously submitted under non-limited access program fisheries that it uses or intends to use for determinations under newly established LAPs be treated as within the scope of the confidentiality exception under subparagraph 402(b)(1)(G).

2. Law enforcement exception: This proposed rule, if adopted, would add text to address sections 402(b)(1)(A) and (C) of the Magnuson-Stevens Act, id. 1881a(b)(1)(A), (C), which provides that confidential information may be released to Federal and state enforcement personnel responsible for fishery management plan (FMP) enforcement. (§ 600.420(e)). FMPs must be consistent with other applicable laws, including but not limited to the Endangered Species Act and the Marine Mammal Protection Act. Thus, the proposed rule allows for disclosure of confidential information to State and Federal employees for the enforcement of marine resources laws. Administrative and judicial enforcement systems have procedures to address confidential information. In some instances, however, that material may remain confidential or it may become part of the public record.

3. Written authorization exception: Section 402(b)(1)(F) of the MSA allows for the release of confidential information ''when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.'' 16 U.S.C. 1881a(b)(1)(F). This exception, when read in conjunction with the introductory text at section 402(b) of the MSA, applies generally to any person that is required to submit information in compliance with any requirement or regulation under the MSA. Id. at 1881a(b). *See* section I for definition of ''person'' under the MSA, 16 U.S.C. 1802(36).

The person or persons that are subject to MSA submission of information requirements are not uniform and depend on the specific permitting and fishery reporting requirements associated with the applicable FMP. Recognizing this variability, the proposed rule clarifies that the person subject to the applicable submission of information requirement is the person authorized to release that information. For example, if an MSA regulation requires the owner or operator of a vessel to submit catch and fishing activity information in a logbook, either the vessel owner or operator could provide written authorization for release of the logbook information. To provide flexibility, the proposed rule allows the person(s) authorized to provide written authorization to designate another person(s) to exercise that authority.

For information collected by a human observer pursuant to 16 U.S.C. 1853(b)(8), NMFS notes that regional observer programs collect and/or create information for: (1) conservation and management purposes, and (2) program management and administration. The proposed rule would retain NMFS' current practice of allowing the person(s) subject to an observer requirement (*e.g.,* owner or operator of a fishing vessel or processing facility) to provide written authorization for release of information collected by observers for conservation and management purposes to include, among other things, data on fishing and fish processing, including but not limited to the type and quantity of fishing gear used, catch in numbers of fish or weight thereof, areas in which fishing was engaged in, and economic information, *see id.* section 1853(a)(5), and data on the amount and type of bycatch occurring in the fishery, *see id.* section 1853(a)(11). In the context of fishing sectors and cooperatives, the permit holder, vessel owner, or vessel operator of each individual vessel within a sector or a cooperative would be able to authorize release of observer information collected from his or her respective vessel, if they are subject to an observer coverage requirement.

Information created for observer program management and administration would not be subject to the written authorization exception. Such information includes field notes, journals, diaries, incident reports, or other information required under a program's administrative procedures. This type of information is used to review observer performance, evaluate the observer's data and collection methodology, document vessel safety concerns and accommodations, and assess any reports of non-compliance with fishery regulations. More generally, observer programs use this information to evaluate the overall effectiveness of the programs. For example, program administrative procedures generally require observers to maintain an official logbook (also referred to as field notes, a journal or diary which may be retained and submitted in either a hard copy or through digital media) that includes technical information related to collection and sampling methodologies and notes that concern their work while deployed on a vessel. Following completion of a fishing trip, observers use their logbooks to answer post-fishing trip questions during a debriefing process. Debriefings are generally conducted by NMFS personnel at NMFS facilities, although some observer programs may have debriefings conducted at observer provider offices by observer provider supervisory personnel. NMFS, or the observer provider as appropriate, compiles the observer's responses into a post-trip debriefing report. Observer providers that are tasked with administration of observer debriefings are required to provide debriefing reports to NMFS.

NMFS believes the above approach is consistent with the written authorization exception, which provides for the person ''submitting'' information to NMFS to authorize release of that information. Observers submit information collected for scientific and management purposes to the respective observer programs essentially on behalf of the person that is required to carry an observer. Allowing this person to authorize release of the information collected by the observer on their behalf is consistent with the purpose of the exception, which is to provide a person that is subject to an information submission requirement with access to information that concerns their business. On the other hand, information compiled for management and administration of the observer program is not required to be ''submitted'' to NMFS by statute or regulation. It is created as a result of program administrative procedures and should be treated as internal program information. As such, this information would not be subject to disclosure under the written authorization exception or under FOIA. In withholding debriefing reports, for example, NMFS would apply MSA section 402(b)(2), which prohibits disclosure of observer information and would apply FOIA Exemption Three, which, as explained above, authorizes the withholding of information that is prohibited from disclosure under another Federal statute.

NMFS also proposes to take the same approach on the handling of catch monitor information collected at shoreside processors. Information that a catch monitor collects at a shoreside facility is not, by definition, observer information because such catch monitors are not carried on a vessel. See 16 U.S.C. 1802(32) (quoted above, defining an observer as a person who is

''carried on a vessel''). Nonetheless, when such data collection is required pursuant to the MSA, NMFS will take a similar approach as with observer information for purposes of the written authorization exception. NMFS would allow a shoreside processor (owner, operator, or other person subject to the information submission requirement) to execute written authorization for access to and release of information that is collected for conservation and management purposes, but not information collected for observer program management and administration.

After finalization of this rulemaking, NMFS intends to streamline its processes for a person that is subject to an information submission requirement to authorize release of information pursuant to the written authorization exception. These improvements would create more uniformity and efficiencies across regions and provide details to persons who are subject to MSA information reporting requirements on how they can use the written authorization exception.

To prevent an unauthorized disclosure of confidential information, NMFS proposes at § 600.420(f) that a person or their designee who submits a written authorization prove their identity by a statement consistent with 28 U.S.C. 1746, which permits statements to be made under the penalty of perjury as a substitute for notarization.

4. Section 608 of the FMPA, as amended by the 2015 IUU Fishing Enforcement Act, provides that the MSA confidentiality provisions shall not apply with respect to the FMPA—

for obligations of the United States to share information with a regional fisheries management organization (as that term is defined by the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing [PSMA]); or to any information collected by the Secretary regarding foreign vessels.

16 U.S.C. 1826i(b)(2)(A)–(B). The term ''Regional Fisheries Management Organization'' (RFMO) means ''an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures.'' PSMA at Art. 1(i). Section 606(d)(2)(B) of the FMPA, 16 U.S.C. 1826g(d)(2)(B), includes substantively the same provision as in section 608(b)(2).

Consistent with the above statutory provisions, NMFS proposes to define confidential information so as not to include fishing effort, catch information and other forms of vessel-specific information that the United States must provide to an RFMO to which the United States is a member in order to satisfy any information sharing obligations of the respective RFMO. NMFS proposes at § 600.10 to define an information sharing obligation of an RFMO as a measure, or part thereof, which creates a binding requirement on the United States to report certain information by virtue of its membership in the respective RFMO.

Additionally, NMFS proposes to define confidential information so as not to include any information collected by NMFS under the MSA regarding foreign vessels. Id.

B. Proposed Changes Allowing Disclosure of Confidential Information Where Limitations Apply to Further Disclosure

NMFS proposes the following changes concerning confidentiality requirement exceptions that allow for information to be shared with other entities, provided that specified precautions are undertaken to protect the information. Some are updates to the regulations to reflect statutory amendments to the MSA confidentiality provisions. Other changes are proposed to facilitate Council use of confidential information for performance of their functions and those of Council subsidiary bodies.

1. Adding proposed § 600.410(d)(3) related to MSA section 402(b)(2)(C), which authorizes the sharing of observer information between and among observer providers, and observers, for observer training or preparation of observers for deployments to specific vessels, or to validate the accuracy of the observer information collected. Id. 1881a(b)(2)(C). Under these procedures, NMFS could make observer information available to observer providers to prepare an observer for a deployment on a specific vessel so that they have greater awareness of the possible circumstances on a vessel that could affect their health and safety while deployed. Any relevant observer information could be made available between and among observer providers and observers but otherwise held confidentially. This could include observer reports of violence, harassment, intimidation, or illicit or reckless behavior by a vessel's crew or operator, and other types of negative or positive experiences while onboard a vessel. In addition, observer reports of vessel conditions to include its accommodations and facilities could also be made available.

2. Adding proposed § 600.415(a)(1)(ii) related to MSA section 402(b)(1)(H), which authorizes the disclosure of confidential information in support of homeland and national security activities.

3. Adding proposed § 600.415(a)(3) related to MSA section 402(b)(1)(C), which authorizes the disclosure of confidential information to state employees responsible for FMP enforcement pursuant to a Joint Enforcement Agreement with NMFS.

4. Adding proposed § 600.415(a)(2) related to MSA section 402(b)(1)(B), which authorizes the disclosure of confidential information to state or Marine Fisheries Commission employees as necessary to further the mission of the Department of Commerce.

5. Revising a provision under which confidential information can be disclosed to Council members for use by the Council for conservation and management purposes (§ 600.415(a)(4)(ii)). Under MSA section 402(b)(3), the Secretary may approve a Council's use of confidential information for conservation and management purposes. 16 U.S.C. 1881a(b)(3). NMFS' current confidentiality regulations implement this authority under § 600.415(d)(2). That regulation authorizes NMFS to grant a Council access to confidential information upon written request by the Council Executive Director. In determining whether to grant access, NMFS must consider, among other things, the ''possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.'' Id. During development of this proposed action, a question was raised regarding whether this text allows public disclosure of information that was released to a Council under this procedure. As MSA section 402(b)(3) provides for disclosure of information for use by a Council, and not to the public at large, NMFS is proposing to delete the text about public disclosure.

6. Adding provisions to authorize release of confidential information to a Council's scientific and statistical committee (SSC) (§ 600.415(a)(4)(iii)), and advisory panels (APs) (§ 600.415(a)(4)(iv)). Under the Magnuson-Stevens Act as amended by the 2006 MSRA, Councils must establish, maintain, and appoint the members of an SSC. 16 U.S.C. 1852(g)(1)(A). Members appointed by Councils to SSCs shall be Federal or

state employees, academicians, or independent experts. Id. 1852(g)(1)(C). The role of the SSC is, among other things, to assist the Council in the development, collection, evaluation and peer review of statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any FMP. Id. 1852(g)(1)(A). Furthermore, the SSC is required to provide its Council ongoing scientific advice for fishery management decisions, including, among other things, recommendations for acceptable biological catch and preventing overfishing and reports on stock status and health, bycatch, and social and economic impacts of management measures. Id. 1852(g)(1)(B). The Magnuson-Stevens Act further provides that each Council shall establish ''advisory panels as are necessary or appropriate to assist it in carrying out its functions under [the] Act.'' Id. 1852(g)(2). As with SSCs, APs serve an important role in providing recommendations to a Council on development of FMPs and Plan Amendments, specifications, management measures and other conservation and management matters.

To carry out their responsibilities, SSC and AP members may need to evaluate confidential information. NMFS may release confidential information to Federal and state employees appointed to a Council's SSC or APs as provided under Magnuson-Stevens Act section 402(b)(1)(A) and (B). However, the existing confidentiality regulations do not address release of confidential information to academicians or independent experts appointed to an SSC or AP. Because all members of a Council's SSC or APs may need to evaluate confidential information, NMFS proposes to add procedures through which a Council can request, through its Executive Director, that members of the Council's SSC or AP that are not Federal or state employees be granted access to confidential information. NMFS proposes to add these procedures pursuant to Magnuson-Stevens Act section 402(b)(3), which authorizes the Secretary to approve the release and use of confidential information by a Council for fishery conservation and management. Given the statutory role that a Council's SSC and any of its APs have in development and amendment of any FMP, NMFS believes that establishing a process for releasing confidential information to an SSC or AP is consistent with the statutory authorization that allows a Council to use confidential information for making its recommendations on fishery conservation and management. NMFS recognizes the concern that members of an SSC or an AP, who are not Federal or state employees, may gain personal or competitive advantage through access to confidential information. To address this concern, the proposed procedures would require NMFS to approve any request from a Council Executive Director that confidential information be released to the Council for use by SSC or AP members who are not Federal or state employees. In making a decision regarding such a request, NMFS must consider whether those SSC or AP members might gain personal or competitive advantage from access to the information.

7. Adding proposed § 600.420(b) related to MSA 402(b)(2)(B), which authorizes the release of observer information when the information is necessary for proceedings to adjudicate observer certifications.

8. Disclosure to agencies of state, Federal, or foreign governments, the Food and Agriculture Organization (FAO) of the United Nations, or the Secretariat, or equivalent, of a body made pursuant to an international fishery agreement.

Section 608 of the FMPA, as amended by the 2015 IUU Fishing Enforcement Act, provides that, subject to MSA confidentiality provisions except as provided in section 608(b)(2) (discussed in section III(A)(4)), the Secretary may disclose, as necessary and appropriate, information, including information that is collected jointly under the MSA and a statute that implements an international fishery agreement, to any other Federal or state government agency, the FAO, or the Secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement (IFA) if such government, organization, or arrangement, respectively, has policies and procedures to protect confidential information from unintended or unauthorized disclosure. 16 U.S.C. 1826i(d)(1). The FMPA does not define ''international fishery agreement'' but the term ''international fishery management agreement'' is defined under its implementing regulations as ''any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.'' 50 CFR 300.201. To implement section 608 of the FMPA, proposed section 600.415(a)(6) provides that NMFS may disclose confidential information to employees of state or Federal government agencies, the FAO, or the Secretariat or equivalent of a body made pursuant to an international fishery agreement (IFA) (defined the same as ''international fishery management agreement'' at 50 CFR 300.201) provided that NMFS determines (in coordination with the U.S. Head of Delegation for disclosures to the FAO, RFMOs, or other relevant international body) that: (i) the disclosure is necessary and appropriate under section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i), and; (ii) the applicable government agency, FAO, or Secretariat or equivalent of a body made pursuant to an IFA will apply policies and procedures to protect confidential information from unintended or unauthorized disclosure. Data sharing under proposed § 600.415(a)(6) may include disclosures to scientific committees and other subsidiary bodies of an organization or arrangement made pursuant to an IFA. NMFS intends to develop a protocol that reflects the requirements of proposed § 600.415(a)(6) in its internal control procedures under § 600.410(b).

NMFS notes that section 606 of the FMPA (Enforcement), 16 U.S.C. 1826g(d)(2), includes a disclosure authorization that is the same as that in section 608, 16 U.S.C. 1826i(d)(1), except in two respects. First, section 606 additionally allows for disclosure of information to a foreign government. Id. at 1826g(d)(2). Second, in addition to being necessary and appropriate, a disclosure under section 606 must be necessary to ensure, administer, or assist with at least one of five enumerated compliance and enforcement purposes. Id. at 1826g(d)(2)(A)(ii)(I)–(V). Given the overlap of section 606 with section 608, NMFS proposes that the procedures for implementation of section 608 also apply to disclosures under section 606, except for disclosures to a foreign government. In such cases, the proposed § 600.415(a)(7) requires that the disclosure meet the requirements of § 600.415(a)(6) and be necessary to ensure, administer, or assist with at least one of five enumerated compliance enforcement purposes.

In the course of negotiating binding provisions for information sharing under a bilateral or multilateral treaty or other agreement, NMFS, working with other U.S. government representatives as appropriate, will ensure that the information sharing provisions are necessary and appropriate for the scientific, management, or enforcement purposes of the agreement, and that the body receiving the information has or will have policies and procedures in

place to prevent unintended disclosure. NMFS, coordinating with the relevant Head of Delegation for the United States, as needed for disclosures to the FAO, RFMOs, or other relevant international body, will confirm that the above two conditions have been met prior to the United States agreeing to and/or providing information pursuant to information sharing provisions under the agreement or measures adopted pursuant to the agreement.

IV. Proposed Changes Requiring the Protection of Business Information in Releases of Information in Aggregate or Summary Form

The MSA at section 402(b)(3) provides that ''the Secretary may release or make public any information submitted in compliance with any requirement or regulation under the Magnuson-Stevens Act in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information.'' 16 U.S.C. 1881a(b)(3). Current regulations at 50 CFR 600.10 and 400.425(a) focus on protection of a submitter's identity, but do not address a submitter's business information. Section 600.10 includes a definition of ''aggregate or summary form'' that allows for the public release of confidential information if it is ''structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.'' The regulations also state that the AA will not release information ''that would identify the submitter, except as required by law.'' Id. § 600.425(a).

Application of Protection Beyond Identity to Financial and Operational Information

NMFS reviewed the legal and policy basis for this approach as part of its development of revised regulations for implementation of the 2006 MSRA and the 1996 SFA. It appears that NMFS historically interpreted the two different elements of MSA 402(b)(3)—''identity of any person'' and ''business of any person''—to mean a submitter's name or the name of their business. Based on its reassessment of MSA section 402(b)(3), NMFS proposes to revise the regulatory definition of ''aggregate or summary form'' to explicitly address ''business of any person'' and to add a specific definition for that term.

The MSA does not define ''business of any person,'' and NMFS acknowledges that it could be subject to different interpretations. After considering the types of information that may be collected, generated, or used in commercial activities related to fishing, and the commonly understood meaning of ''business of any person,'' NMFS proposes to define that term at § 600.10 as meaning financial and operational information. Financial information would include ownership information, information in cash flow documents and income statements, and information that contributes to the preparation of balance sheets. Operational information would include data such as, fishing locations, time of fishing, type and quantity of gear used, catch by species in numbers or weight thereof, number of hauls, number of employees, estimated processing capacity of, and the actual processing capacity utilized, by U.S. fish processors. By providing these definitions, NMFS limits releases to an aggregate or summary form which does not disclose the specified financial and operational information of a person.

When responding to FOIA requests for MSA confidential information, NMFS takes into consideration FOIA Exemption Three, 5 U.S.C. 552(b)(3), and other relevant FOIA exemptions, such as Exemption Six which applies to privacy information. FOIA Exemption Three applies to information that is exempted from disclosure by another statute. NMFS interprets MSA section 402(b) to exempt from disclosure information that would directly or indirectly disclose the identity or business of any person. As explained above, this proposed rule, if adopted, would require NMFS to consider both factors—not just identity—when applying the aggregate or summary form provisions of the regulations. While this could result in more information being withheld, NMFS believes that detailed and useful information will continue to be disclosed under the aggregate or summary form provisions.

Observer Information on Interactions With Marine Mammals and Endangered Species Act (ESA)-Listed Species

In developing this proposed rule, NMFS considered whether its definition for ''confidential information'' should include observer information that concerns interactions with marine mammals and ESA-listed species. As explained below, NMFS proposes to exclude from the definition of ''confidential information'' vessel-specific observer information on interactions with marine mammals, while interactions with ESA-listed species would be ''confidential'' within the scope of that definition.

Release of observer information that concerns interactions with marine mammals would advance implementation of statutory mandates under the Marine Mammal Protection Act (MMPA). For example, this information is critical for deliberations by Take Reduction Teams (TRTs) that are convened under section 118(f)(6)(A) of the MMPA. 16 U.S.C. 1387(f)(6)(A)(i). TRTs established under the MMPA must meet in public and develop plans to reduce incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. See Id. at 1387(f)(6)(D) (public meetings) and 1387(f) (development of take reduction plans). Specific details about interactions with marine mammals that occurred during commercial fishing operations are critical to developing a plan. Id. 1387(f). This information is often available only through observer records. Without detailed observer information on interactions with marine mammals, TRTs may be unable to develop targeted take reduction plans to reduce bycatch of marine mammals pursuant to the statutory mandate.

Furthermore, the MMPA requires fishermen to report all incidental mortality and injury of marine mammals, including the species killed or injured, the date, time, and geographic location of such occurrence (16 U.S.C. 1387(e)), and this self-reported information is not subject to the MSA confidentiality requirements.

For these reasons, NMFS proposes in § 600.10 that the definition of ''confidential information'' exclude the following observer information on marine mammal protected species interactions: species of each marine mammal incidentally killed or injured; the date, time, and geographic location of the take; and information regarding fishing practices and gear used in the take that would not constitute a trade secret under FOIA, 5 U.S.C. 552(b)(4).

However, because the ESA does not include similar specific mandates relative to managing fisheries interactions with ESA-listed species, vessel-specific observer information on interactions with ESA species would be treated as confidential information under this proposed rule. If the ESA-listed species were marine mammals, then the information would be treated per the MMPA confidentiality requirements at 16 U.S.C. 1387(d)(8), implemented at 50 CFR 229.11. Nonetheless, NMFS' implementation of the ESA is facilitated by the use of detailed information on interactions with listed species. For example, NMFS may need to analyze detailed information about commercial fisheries interactions with species listed under the ESA as part of implementation of its Section 7 consultation for MSA-

managed fisheries. See 402.14(g)(8) (requirements for biological opinions). Where such information is confidential for MSA purposes, NMFS will only use it internally and any public facing documents will present that information in a non-confidential aggregate or summary form that does not disclose submitter identity or their business information.

However, NMFS notes that it will use, and may publicly disclose, vessel-specific information on interactions with ESA-listed species where that information is only collected under the ESA and as such not MSA confidential information. For example, under NMFS' sea turtle observer requirement issued under the ESA, NMFS determines on an annual basis the commercial and recreational fisheries that may be required to carry an observer to monitor potential interactions with sea turtles (50 CFR 222.401–404). Because the ESA does not have confidentiality of information requirements, vessel-specific interactions with ESA-listed species collected by observers who are deployed only under the ESA sea turtle rule are not treated as confidential information. In the context of information collected only under the ESA, the MSA confidentiality requirements are inapplicable. NMFS may develop rules similar to the ESA sea turtle rules that provide for deployment of observers under the ESA to monitor take of species listed under that authority. More broadly, NMFS intends to explore whether there are other options for release of ESA species interaction data notwithstanding the MSA confidentiality requirements.

However, even if MSA confidentiality does apply, NMFS can use vessel-specific information on interactions with ESA-listed species internally and in a manner that is protective of submitter identity and their business information. Under MSA 402(b)(1)(A), employees of NMFS and Councils who are responsible for FMP development, monitoring, or enforcement may access confidential information. FMPs must be consistent with the ESA and other applicable law. Thus, consistent with applicable control procedures for protection of confidential information, NMFS has and will continue to ensure access to MSA confidential information for compliance with ESA mandates. This includes internal use of MSA confidential information for Section 7 consultations when developing FMPs and plan amendments, for monitoring requirements that apply under Biological Opinions, and any other actions needed to implement the ESA.

In addition, NMFS intends to develop specific strategies and techniques for aggregation of vessel-specific information on interactions with ESA species. In many instances, NMFS has sufficient data for release of ESA interaction information in an aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. However, when such events are rare, typically employed spatial and temporal aggregation methods do not yield results that satisfy a generally applicable level of aggregation necessary to protect confidential information. NMFS believes that the rarity of interactions with ESA-listed species should be taken into account when structuring that information in an aggregated manner and determining whether any aggregate form would disclose a submitter's identity or business.

Lastly, as discussed above and as a proposed change to 50 CFR 600.410, NMFS intends to revise its internal control procedures in accordance with the statutory changes and with this proposed regulation. As part of these control procedures, NMFS will include ''procedures for aggregating confidential data and responding to requests for non-confidential information.'' NMFS will make these procedures available to the public.

V. Proposed Changes Clarifying NMFS' Confidentiality Regulations

NMFS proposes the following non-substantive changes intended to improve the clarity and accuracy of the regulations.

1. Removing the existing language at § 600.410(a)(2) that states ''After receipt, the Assistant Administrator will remove all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.''

Through experience, NMFS has found that maintaining identifying information is necessary for programmatic needs, including FMP monitoring, quota share allocations, capacity modeling, and LAP development. Accordingly, NMFS would no longer require the removal of identifiers from confidential information when NMFS uses the information to complete programmatic actions. However, NMFS would preserve the confidentiality of identifying information unless an exception allows for release.

2. The authorization to disclose information under section 402(b)(1)(B), as amended by the MSRA and codified in the United States Code, appears to have a typographical error. Prior to the MSRA, section 402(b)(1)(B) authorized the release of confidential information to ''State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents the public disclosure of the identity or business of any person.'' Section 402(b)(1)(B) as amended by the MSRA provides that confidential information may be disclosed ''to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person.'' NMFS believes that this was a typographical error, and that Congress intended the text to say ''identity or business,'' consistent with how that phrase appears in section 402(b)(3). As such, this proposed rule uses the phrase ''identity or business'' with regard to the section 402(b)(1)(B) text.

VI. Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with section 402(b) of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

The confidentiality of information requirements under MSA section 402(b) are implemented at 50 CFR part 600, subparts B and E. Certain terms used in these regulations are defined under 50 CFR part 600, subpart A. This proposed action would revise 50 CFR part 600, subparts A, B and E to conform with the Magnuson-Stevens Act as amended by the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act and the 1996 Sustainable Fisheries Act and with 2015 amendments to the Moratorium Protection Act related to MSA confidentiality of information. Consistent with those amendments, this proposed action requires the confidentiality of information collected by NMFS observers, revises exceptions that authorize the disclosure of confidential information, and adds three new disclosure exceptions. In addition,

this action proposes updates to reflect NMFS' policy on the release of MSA confidential information in an aggregate or summary form.

This proposed action applies to agency policies and procedures for the handling of information required to be maintained as confidential under MSA section 402(b). Adoption of the proposed revisions would not have a significant economic impact on a substantial number of small entities. The proposed revisions would also apply to private companies that provide observer staffing and electronic monitoring (EM) services to support NMFS and industry-sponsored programs. Nine private companies currently provide observers on a seasonal or ongoing basis to support the collection of information in 42 U.S. fisheries. In addition, there are 10 EM service providers operating in U.S fisheries; 6 of them also provide observer staffing support. Of the 10 EM service providers, 1 directly contracts with NMFS to conduct monitoring and the others are considered industry-sponsored programs.

The proposed regulations require observer providers and EM service providers to take steps to maintain the confidentiality of information including the means to secure and store confidential information. The costs to meet this requirement are minimal and all observer providers, and EM service providers, that currently contract with NMFS or provide observers under industry-sponsored programs already have appropriate measures in place. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

Lists of Subjects in 50 CFR Part 600

Confidential business information, Fisheries.

Dated: March 5, 2024.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

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

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

■ 2. Amend § 600.10 by:
■ a. Removing the definitions of ''Confidential statistics'' and ''Data, statistics, and information'';
■ b. Revising the definition of ''Aggregate or summary form''; and
■ c. Adding, in alphabetical order, definitions for ''Business of any person'', ''Confidential information'', ''Electronic Monitoring Service Provider'', ''Information sharing obligation of a Regional Fishery Management Organization (RFMO)'', ''Observer provider'', and ''Regional Fishery Management Organization.''

The revisions and additions read as follows:

§ 600.10 Definitions.

* * * * *

Aggregate or summary form means information structured in such a way that the identity or business of any person (defined at 16 U.S.C. 1802(36)) who submitted the information cannot be directly or indirectly determined either from the present release of the information or in combination with other releases.

* * * * *

Business of any person means: (1) Financial information such as ownership information, cash flow documents, income statements, or information that contributes to the preparation of balance sheets; or

(2) Operational information such as fishing locations, time of fishing, specific gear configuration, catch by species in numbers or weight thereof, number of hauls, number of employees, estimated processing capacity of, and the actual processing capacity utilized, by U.S. fish processors.

* * * * *

Confidential information includes any observer information as defined under 16 U.S.C. 1802(32) or any information submitted to the Secretary, a state fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Magnuson-Stevens Act. Confidential information does not include:

(1) Observer information related to interactions with species protected under the Marine Mammal Protection Act: the date, time, and location of interactions, the type of species, and the fishing practices and gear involved provided that information regarding fishing practices and gear would not constitute a trade secret under the Freedom of Information Act, 5 U.S.C. 552(b)(4);

(2) Fishing effort, catch information, and other forms of vessel-specific information that the United States must provide to a Regional Fishery Management Organization (RFMO) to which the United States is a member in order to satisfy any information sharing obligations of the respective RFMO;

(3) Any information collected by NMFS under the MSA regarding foreign vessels.

* * * * *

Electronic Monitoring Service Provider means any person who manages observer information collected by an electronic monitoring system required under an MSA regulation.

* * * * *

Information sharing obligation of a Regional Fishery Management Organization (RFMO) means a measure, or part thereof, which creates a binding requirement on the United States to report certain information by virtue of its membership in the respective RFMO.

* * * * *

Observer provider means any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under a requirement of the MSA or as part of a cooperative research initiative.

* * * * *

Regional Fishery Management Organization (RFMO) means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures.

* * * * *

§ 600.130 [Amended]

■ 3. In § 600.130, remove the word ''statistics,'' wherever it appears, and add in its place the word, ''information.''

■ 4. Subpart E to part 600 is revised to read as follows:

Subpart E—Confidentiality of Information

Sec.
600.405 Applicability.
600.410 Protection of confidential Information.
600.415 Access to confidential information
600.420 Release of confidential information.
600.425 Release of information in aggregate or summary form.

Subpart E—Confidentiality of Information

§ 600.405 Applicability.

This subpart applies to confidential information as defined at § 600.10 and that is under NMFS' custody and control.

§ 600.410 Protection of confidential information.

(a) *General.* This section requires control procedures related to confidential information and provides

procedures for the protection of certain confidential information submitted to NMFS and State Fishery Management Agencies or Marine Fisheries Commissions pursuant to a statutory or regulatory requirement imposed pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

(b) *Confidential information collected by NMFS.* NMFS must establish internal control procedures for the maintenance of and access to any confidential information. The control procedures should include, but are not limited to the following:

(1) Requirements for information system management and data storage to prevent unauthorized access to or disclosure of confidential information;

(2) Procedures for NMFS employees to access confidential information;

(3) Procedures for providing access to confidential information by states, Councils, and Marine Fisheries Commissions;

(4) Procedures for evaluating whether members of a Council, or a Council Scientific and Statistical Committee (SSC), plan team, or Advisory Panel (AP) could gain personal or competitive advantage from access to confidential information under § 600.415(a)(4);

(5) Procedures for evaluating requests by contractors, grantees, cooperative agreement recipients and other external individuals and organizations to access confidential information;

(6) Procedures for vessel owners to access and request confidential information, including historic information associated with a fishing permit;

(7) Standardized sharing agreements that acknowledge the confidentiality and protection of information from public disclosure;

(8) Template for written authorization for release of confidential information for purposes of § 600.420(f);

(9) Procedures for aggregating and summarizing confidential data and responding to requests for non-confidential information;

(10) Any other procedures as necessary to maintain the confidentiality of information.

(c) *Confidential information collected by State Fishery Management Agencies or Marine Fisheries Commissions.* NMFS may enter into an agreement with a state or a Marine Fisheries Commission for the collection of confidential information on behalf of the Secretary provided that NMFS, as part of the agreement, determines that:

(1) The state has confidentiality of information authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to prohibit public disclosure of confidential information;

(2) The Marine Fisheries Commission has established policies and procedures comparable to the Magnuson-Stevens Act and that the Commission will exercise such policies and procedures to prohibit public disclosure of confidential information.

(d) *Observer and Electronic Monitoring Services.* (1) Regarding observer providers, NMFS may allow the collection of observer information by an observer pursuant to a confidentiality agreement that:

(i) Specifies procedures that the observer provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the observer provider, and each observer and each of its other employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the criminal and civil penalties for unauthorized use or disclosure of such information provided under 16 U.S.C. 1858.

(2) Electronic monitoring service providers. NMFS may allow the handling of observer information by an electronic service provider pursuant to a confidentiality agreement that:

(i) Specifies procedures that the electronic monitoring service provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the electronic monitoring service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information provided under and 16 U.S.C. 1858.

(3) As part of any agreement with an observer provider under paragraph (d)(1) of this section, NMFS may allow the sharing of observer information among and between observers and observer providers for:

(i) Training or preparation of observers for deployments on specific vessels; or

(ii) Validating the accuracy of the observer information collected.

§ 600.415 Access to confidential information.

Confidential information may be accessed by the following persons subject to any specified conditions and procedures:

(a) Federal employees;

(1) Responsible for Fishery Management Plan (FMP) development, monitoring, or enforcement, including persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS; or,

(2) At the request of another Federal agency, if providing the information supports homeland security and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(b) State or Marine Fisheries Commission employees as necessary to further the mission of the Department of Commerce, subject to an agreement with NMFS that prohibits public disclosure of confidential information;

(c) State enforcement personnel who are responsible for enforcing FMPs, provided that the state for which the employee works has entered into a Joint Enforcement Agreement with NOAA and the agreement is in effect;

(d) Councils. A Council Executive Director may request access for the following:

(1) The Council's employees who are responsible for FMP development and monitoring;

(2) Members of the Council for use by the Council for conservation and management, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(3) Members of the Council scientific and statistical committee (SSC) established under section 302(g) of the Magnuson-Stevens Act who are not Federal or state employees, if necessary for the SSC to assist and advise the Council as provided under the Act, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(4) Members of the Council's advisory panel (AP) established under section 302(g) of the Magnuson-Stevens Act, if necessary for the AP to provide information and recommendations on, and assist in the development of FMPs and amendments thereto, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(5) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes but only if approved by NMFS and subject to a confidentiality agreement.

(e) Vessel Monitoring System Information. Nothing in these regulations contravenes section 311(i) of the Magnuson-Stevens Act which requires the Secretary to make vessel

monitoring system information directly available to the following:

(1) Enforcement employees of a state with which NMFS has entered into a Joint Enforcement Agreement and the agreement is in effect;

(2) State management agencies involved in, or affected by, management of a fishery if the state has entered into an agreement with NMFS that prohibits public disclosure of the information.

(f) Employees of state or Federal government agencies, the Food and Agriculture Organization (FAO) of the United Nations, or the Secretariat or equivalent of a body made pursuant to an international fishery agreement (IFA) (defined the same as international fishery management agreement at 50 CFR 300.201), provided that NMFS determines (in coordination with the U.S. Head of Delegation for disclosures to the FAO, RFMOs, or other relevant international body) that:

(1) The disclosure of confidential information is authorized, necessary and appropriate under section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i); and

(2) The applicable government agency, FAO, or Secretariat or equivalent of a body made pursuant to an IFA will apply policies and procedures to protect confidential information from unintended or unauthorized disclosure.

(g) Employees of agencies or entities described under paragraph (a)(6) or any foreign government provided that NMFS determines that:

(1) Disclosure of confidential information is authorized, necessary and appropriate for a compliance or enforcement purpose enumerated under section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g(d)(2)(A)); and

(2) The applicable agency, entity, or foreign government will apply policies and procedures to protect confidential information from unintended or unauthorized disclosure.

§ 600.420 Release of confidential information.

NMFS will not disclose to the public any information made confidential pursuant to the Magnuson Stevens Fishery Conservation and Management Act, except the agency may disclose information when:

(a) Authorized by regulations issued by the Secretary to implement recommendations contained in an FMP prepared by the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(b) Observer information is necessary in proceedings to adjudicate observer certifications.

(c) Information is required to be submitted to the Secretary for any determination under a limited access program (LAP). This exception applies at the level of confidential information that NMFS has used, or intends to use, for a regulatory determination under a LAP. This includes information that was submitted before the fishery was a LAP and that NMFS subsequently uses or intends to use for a LAP determination. For the purposes of this exception:

(1) Limited Access Program means a program that allocates exclusive fishing privileges, such as a portion of the total allowable catch, an amount of fishing effort, or a specific fishing area, to a person.

(2) Determination means a decision that is specific to a person and exclusive fishing privileges held or sought under a limited access program. These decisions are: allocations, approval or denial of a lease or sale of allocated privileges or annual allocation, and end of season adjustments.

(d) Required to comply with a Federal court order. For purposes of this exception:

(1) Court means an institution of the judicial branch of the U.S. Federal Government. Entities not in the judicial branch of the Federal Government are not courts for purposes of this section.

(2) Court order means any legal process which satisfies all of the following conditions:

(i) It is issued under the authority of a Federal court;

(ii) A judge or magistrate judge of that court signs it; and

(iii) It commands NMFS to disclose confidential information as defined under § 600.10.

(e) Necessary for enforcement of the Magnuson-Stevens Act, or any other statute administered by NOAA; or when necessary for enforcement of any state living marine resource laws, if that state has a Joint Enforcement Agreement that is in effect.

(f) A person that is subject to a Magnuson-Stevens Act submission of information requirement, or their designee, provides written authorization to the Secretary authorizing release of such information to other persons for reasons not otherwise provided for in section 402(b) of the Act and such release does not violate other requirements of the Act. That person or their designee must prove identity, and authorization to act if serving as a designee, by a statement consistent with 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. The statement of identity, and authority to serve as a designee, must be in the following form:

(1) If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)''.

(2) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

§ 600.425 Release of information in aggregate or summary form.

NMFS may disclose in any aggregate or summary form information that is required to be maintained as confidential under these regulations.

■ 5. In § 600.725, add paragraph (x) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(x) Disclose confidential information without authorization.

[FR Doc. 2024–05106 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 48
Monday, March 11, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by April 10, 2024. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Fruit, Nuts, And Specialty Crops—Substantive Change.

OMB Control Number: 0535–0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data activities is granted under U.S. Code title 7, section 2204(a). Information is collected on a voluntary basis from growers, processors, and handlers through surveys. Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, as amended, 7 U.S.C. 2276, and title III of Public Law 115–435 (CIPSEA) which requires USDA to afford strict confidentially to non-aggregated data provided by respondents.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Fruit, Nuts, And Specialty Crops information collection request (OMB No. 0535–0039) for program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes balance resources across all of the programs included in the annual estimating program, which represents over 400 individual reports across multiple Information Collection Requests (ICRs). This substantive change is to accommodate the field crop program changes that affect this ICR. The methodology, publication dates, burden and data collection plan do not change as result of these program changes. This change request also includes some nonsubstantive changes for the May 2024 Maple Syrup Inquiry. The changes to these surveys will not affect burden hours.

Need and Use of the Information: Data reported on fruit, nut, and specialty crops are used by NASS to estimate crop acreage, yield, production, utilization, price, and value in States with significant commercial production. These estimates are essential to farmers, processors, importers and exporters, shipping companies, cold storage facilities and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected crop supplies under Federal and State market orders.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 55,435.

Frequency of Responses: On occasion; Annually; Semi-annually; Quarterly; Monthly; Weekly.

Total Burden Hours: 28,114.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–05086 Filed 3–8–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. FCIC–24–0002]

Notice of Request for Renewal and Revision of the Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Renewal and revision of the currently approved information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces a public comment period on the information collection requests (ICRs) associated with the Standard Reinsurance Agreement and Appendices I, II and IV administered by Federal Crop Insurance Corporation (FCIC). Appendix III is excluded because it contains the Data Acceptance System requirements.

DATES: Written comments on this notice will be accepted until close of business May 10, 2024.

ADDRESSES: We invite you to submit comments on this information collection request. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of rule. You may submit comments by any of the following methods, although FCIC prefers that you submit comments

electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–24–0002. Follow the online instructions for submitting comments.
- *Mail:* David L. Miller, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 1400 Independence Avenue SW, Stop 0801, Washington, DC 20250.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 926–7953 or by email at *rmaweb.content@usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *https://www.regulations.gov/privacy-notice.*

FOR FURTHER INFORMATION CONTACT: David L. Miller, Director, Risk Management Agency, at the address listed above, telephone (202) 590–8522 or *dave.miller@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Standard Reinsurance Agreement; Appendices I, II and IV.

OMB Number: 0563–0069.

Type of Request: Renewal and Revision of current Information Collection.

Abstract: The Federal Crop Insurance Act (Act), title 7 U.S.C. chapter 36, section 1508(k), authorizes the FCIC to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Act also states that the reinsurance shall be provided on such terms and conditions as the Board may determine to be consistent with subsections (b) and (c) of this section and sound reinsurance principles.

FCIC executes the same form of reinsurance agreement, called the Standard Reinsurance Agreement (SRA), with thirteen participating insurers approved for the 2024 reinsurance year. Appendix I of the SRA, Regulatory Duties and Responsibilities, sets forth the company's responsibilities as required by statute. Appendix I includes: (a) Conflict of Interest data collection, which in addition to the insurance companies reinsured by FCIC, encompasses the insurance companies' employees and their contracted agents and loss adjusters; and (b) Controlled Business data collection from all employed or contracted agents. Appendix II of the SRA, the Plan of Operations (Plan), sets forth the information the insurer is required to file with RMA for each reinsurance year they wish to participate. The Plan's information enables RMA to evaluate the insurer's financial and operational capability to deliver the crop insurance program in accordance with the Act. Estimated premiums by fund by State, and retained percentages along with current policyholders surplus are used in calculations to determine whether to approve the insurer's requested maximum reinsurable premium volume for the reinsurance year per 7 CFR 400 subpart L. This information has a direct effect upon the insurer's amount of retained premium and associated liability and is required to calculate the insurer's underwriting gain or loss.

Appendix IV of the SRA, Quality Control and Program Integrity, establishes the minimum annual agent and loss adjuster training requirements, and quality control review procedures and performance standards required of the insurance companies. FCIC requires each insurer to submit, for each reinsurance year, a Quality Control Report to FCIC containing details of the results of their completed reviews. The insurance companies must also provide an annual Training and Performance Evaluation Report which details the evaluation of each agent and loss adjuster and reports of any remedial actions taken by the Company to correct any error or omission or ensure compliance with the SRA. The submission of these reports is included in Appendix II.

FCIC is requesting the Office of Management and Budget (OMB) to extend the approval of this information collection for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning the continuation of the current information collection activity as associated with the SRA in effect for the 2024 and subsequent reinsurance years. These comments will help us:

(1) Evaluate whether the current collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the current collection of information;

(3) Enhance the quality, utility, and clarity of the information being collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

The estimate below shows the burden that will be placed upon the following affected entities.

Appendix I—Regulatory Duties and Responsibilities

Conflict of Interest

Estimate of Burden: The public reporting burden of employees, agents and loss adjusters for the Appendix I collection of Conflict of Interest information is estimated to average 1 hour per response.

Respondents/Affected Entities: Insurance company employees and their contracted agents and loss adjusters.

Estimated annual number of respondents: 22,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 22,000.

Estimated total annual burden on respondents (hours): 22,000.

Estimate of Burden: The public reporting burden of the insurance companies of the Appendix I collection of Conflict of Interest information is estimated to average 32 hours per response.

Respondents/Affected Entities: Insurance companies reinsured by FCIC.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 13.

Estimated total annual burden on respondents (hours): 416.

Controlled Business

Estimate of Burden: The public reporting burden of agents for the Appendix I collection of Controlled Business information is estimated to average 1 hour per response.

Respondents/Affected Entities: Insurance company agents.

Estimated annual number of respondents: 14,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 14,000.

Estimated total annual burden on respondents (hours): 14,000.

Estimate of Burden: The public reporting burden of the insurance companies for the Appendix I collection of Controlled Business information is estimated to average 32 hours per response.

Respondents/Affected Entities: Insurance companies reinsured by FCIC.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 13.

Estimated total annual burden on respondents (hours): 416.

Appendix II—Plan of Operations

Estimate of Burden: The public reporting burden of the insurance companies for the collection of Appendix II information is estimated to average 128 hours per response.

Respondents/Affected Entities: Insurance companies reinsured by FCIC.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 13.

Estimated total annual burden on respondents (hours): 1,664.

Appendix IV—Quality Control and Program Integrity

Quality Control and Training Plan and Report

Estimate of Burden: The public reporting burden of the insurance companies for the collection of Appendix IV information is estimated to average 74 hours per response.

Respondents/Affected Entities: Insurance companies reinsured by FCIC.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 13.

Estimated total annual burden on respondents (hours): 962.

Agent Training Requirements

Estimate of Burden: The public reporting burden of agents the Appendix IV training requirements is estimated to average 4 hours per response.

Respondents/Affected Entities: Insurance company agents.

Estimated annual number of respondents: 14,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 14,000.

Estimated total annual burden on respondents (hours): 56,000.

Loss Adjuster Training Requirements

Estimate of Burden: The public reporting burden of loss adjusters for the Appendix IV training requirements is estimated to average 17 hours per response.

Respondents/Affected Entities: Insurance company loss adjusters.

Estimated annual number of respondents: 6,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 6,000.

Estimated total annual burden on respondents (hours): 102,000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2024–05057 Filed 3–8–24; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2024–0001]

Notice of Intent To Prepare an Environmental Impact Statement for the Logan River Watershed Project in Cache County, Utah

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Utah State Office announces its intent to prepare a watershed plan and EIS for the Logan River Watershed Project located within the Logan River Watershed in Cache County, Utah. The proposed watershed plan will examine alternative solutions to reduce water loss and increase efficiency in the current agricultural water delivery system, provide flood control and protection, and enhance recreational facilities in portions of Logan, North Logan, and Hyde Park cities and portions of unincorporated Cache County, Utah between and to the west of the cities. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the proposed action from all interested individuals, Federal, State agencies, and Tribes.

DATES: We will consider comments that we receive by April 10, 2024.We will consider comments received after close of the comment period to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2024–0001. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Derek Hamilton, Water Resources Coordinator, USDA, NRCS, Utah State Office, 125 S State Street, #4010, Salt Lake City, Utah 84138. In your comments, specify the docket ID NRCS–2024–0001.

All comments received will be posted without change and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Derek Hamilton; telephone: (801) 524–4560; email: *derek.hamilton@usda.gov*. Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purposes for the watershed plan is to improve agricultural water management in the Crockett Avenue Irrigation and Distribution, Inc. (Crockett Avenue Irrigation Company) service area. The project is essential to improve efficiency, water conservation, and the maintenance and enhancement of environmental conditions and beneficial water use in the form of instream flows and through the removal of barriers to fish passage; to provide flood control to the Cities of Logan, North Logan, and Hyde Park and portions of Cache

County from flooding that occurs from large thunderstorms and rain on frozen ground events in the valley; and to enhance recreational opportunities within the project area.

This action is needed to address deficiencies in the agricultural water delivery system in the area. The aging canal system loses water to seepage and evaporation. Additionally, the primary method of irrigation to agricultural lands in the valley is flood irrigation and the potential for improving irrigation water management is limited. Improved efficiencies in the pressurization of water for secondary water systems (non-potable irrigation water for lawns and gardens) are needed to reduce strains on existing culinary water supplies for growing communities with limited water resources. Also, the irrigation infrastructure needs improvements as recent stormwater and flash floods have highlighted deficiencies in flood protection with high intensity runoff events overwhelming the existing diversion and canals. In particular, the Crocket Diversion dam is an aging piece of infrastructure originally built in 1860 and it currently poses hazards to:

- the irrigation company and city staff operating the diversion,
- area homeowners, and
- the public.

The structure also limits recreation and is a barrier to fish passage. Additionally, the Crockett Canal near Merlin Olsen Park is at risk of slope failure along the hillside.

This action will increase stormwater capacity to divert and transport excess stormwater flows from existing canals and convey to natural drainages west of Logan, Utah. The existing irrigation canals in the past have been used to deliver both irrigation water and stormwater runoff that occurs during storm events. Recent population growth has converted permeable farmland into impermeable surfaces, and these changes have increased storm water runoff. The existing canals do not have adequate flow capacity to transport the additional stormwater produced by larger storm events.

This action will also enhance recreational facilities in the area. The rapidly growing area of Logan, North Logan, and Hyde Park has a limited trail system. Enhancements are needed to provide additional access points to the terrestrial and river trail systems to provide for safe and effective access for residents and visitors to nearby recreational facilities including USDA Forest Service public lands and their existing trail systems.

NRCS will provide technical and financial assistance for the proposed project through the NRCS Watershed Protection and Flood Prevention Program, and NRCS will also design and implement a selected alternative.

Preliminary Proposed Action and Alternatives

The objective of the EIS is to formulate and evaluate alternatives for the agricultural water needs in the approximately 73,285-acre watershed-focused planning area. The EIS is expected to evaluate three alternatives: two action alternatives, and one no action alternative. The alternatives that may be considered for detailed analysis include:

- *Alternative 1—No Action Alternative:* Taking no action would consist of activities conducted if no Federal action or funding were provided. The 10 irrigation companies that comprise the Crockett Avenue Irrigation Company would continue to divert water from the Logan River at the Crockett Diversion dam 1.3 miles below First Dam. To ensure operator safety at the Crockett Diversion dam, the Crockett Avenue Irrigation Company would necessarily rebuild the aging Crockett Diversion dam along the Logan River. To reduce the risk of slope failure along the hillside of the Crockett Canal near Merlin Olsen Park, they would also line 2,500 feet of the Crockett Canal if the No Action Alternative is selected. Water would continue to be distributed through the existing canal systems, and a pressurized pipe irrigation system and overflow structures would not be constructed. A recreational trail would not be built. The existing structures, besides the Crockett Diversion dam and a portion of the Crockett Canal, would continue to operate in their current condition and would not meet the purpose and need to provide flood control, improve agricultural water management, or enhance recreational opportunities. Existing river conditions would continue, and no instream flows would be provided, especially during the summer, when flows are critical for maintaining water quality and a functional aquatic ecosystem. No Federal action or funding would be associated with the No Action Alternative.
- *Alternative 2—Proposed Action—First Dam Alternative:* The proposed action is to change the diversion location of the Crockett Avenue Irrigation Company's water rights upstream from the existing Crockett Diversion dam to a new diversion at First Dam and would add an additional point of diversion downstream near the western end of the Logan River near N 3200 W. These two diversions would be used to pressurize a newly constructed pressurized irrigation system within the Crockett Avenue Irrigation Company's service area in Logan, North Logan, Hyde Park, and Cache County that would reduce canal water losses and pumping requirements, as well as allow secondary water connections to residents in the service area. The existing, unused Logan City lagoons would be converted to a secondary water storage reservoir, and three pump stations would be constructed, including a pump station to supply water to the storage reservoir from the diversion location along the western end of the Logan River and one to supply water from the reservoir to the irrigation distribution system. The third pump station would pump additional water rights held by a canal company into the storage reservoir. A hydropower turbine would be installed at the storage reservoir and would allow for power generation to offset pumping costs during reservoir filling. This proposed action would remove the Crockett Diversion dam and replace it with a series of steps and pools to reduce safety hazards experienced by system operators, remove several homes and a school from the floodplain, benefit water quality, facilitate fish and recreational passage, and improve river aesthetics. The Providence Pioneer Irrigation Company's Providence Pioneer diversion dam would also be removed, and their associated diversion would be supplied through the newly constructed pressurized irrigation system. This proposed action would secure and manage instream flows while recognizing existing water rights by maintaining an agreed upon amount of flow in the Logan River to the downstream diversion point during the irrigation season to improve river attainment of state water quality standards. Water would also be provided to the Little Logan Canal, including Merlin Olsen Park, the Cache County Fairgrounds, and Willow Park, during the irrigation season. To control floodwaters that enter the Logan, Northern, Hyde Park, Logan North Field, and Logan Northwest Field Canals along the east side of Cache Valley between Logan City and Hyde Park City, a mixed piped and open channel overflow system would be constructed. The system would extend from approximately 1400 North and 900 East to 1800 North and 2400 West. Additionally, approximately 3,500 feet of a non-motorized trail would be constructed along the Crockett Canal's

right-of-way corridor and Canyon Road from 200 East to 600 East to connect an existing trail network to the nearby Forest Service-administered lands.

• *Alternative 3—Proposed Action—Crockett Diversion Alternative:* The proposed action would continue to supply a portion of the Crockett Avenue Irrigation Company's water rights by diverting water at the current Crockett Diversion dam on the Logan River but would add an additional point of diversion for the remainder of the water rights downstream at a new location along the western end of the Logan River near N 3200 W, as in Alternative 1. The Crockett Diversion dam would be reconstructed, and a pump station would be constructed near the Crockett Diversion. The new diversion dam would address structural deficiencies and feature a lower crest elevation that would reduce safety hazards experienced by system operators, remove several homes and a school from the floodplain, benefit water quality, facilitate fish and recreational passage, and improve river aesthetics. This proposed action would also secure and manage instream flows by maintaining an agreed upon amount of flow in the Logan River to the downstream diversion point during the irrigation season and providing flow to the Little Logan Canal, including Merlin Olsen Park, the Cache County Fairgrounds, and Willow Park, during the irrigation season, as in Alternative 1. Besides the diversion location changes and associated actions, the remainder of irrigation improvements (that is, constructing pressurized irrigation distribution system; converting lagoons to secondary water storage reservoir; constructing pump stations; removing Providence Pioneer dam; etc.) and all the flood control and recreation improvements would be the same as in Alternative 1.

Summary of Expected Impacts

An NRCS evaluation of this federally assisted action indicates that the proposed alternatives may have local, regional, or national effects on the environment. Potential effects include wetland and channel alteration, disturbances to wildlife, and temporary disturbances to riparian areas due to the piping of the irrigation system. Long-term beneficial effects would occur with the pressurized piping system and the additional recreational opportunities with the new trail.

The proposed alternatives would also reduce flooding by providing flood protection and flood damage reduction within the service area and to downstream areas from runoff, erosion, and sediment deposition, as well as improve agricultural water management and public safety by piping and pressurizing the irrigation system. It would eliminate a source of open water in residential areas that could pose safety risks. It would also provide additional recreational opportunities for public use by constructing the trail connecting Logan City to nearby Forest Service-administered lands.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

• *Federal Emergency Management Agency Floodplain Development permit.* Implementation of the proposed action would require coordination with the local floodplain administrator and may require a Floodplain Development Permit to ensure all development and engineering requirements for construction within the Special Flood Hazard Areas are implemented.

• *Clean Water Act (CWA) and National Pollutant Discharge Elimination System (NPDES).* The project would require water quality certification under section 401 of the CWA, permitting under section 402 of the NPDES, and section 404 of the CWA for potential wetland impacts.

• *Encroachment Permit.* The project would require coordination and permitting with Utah Department of Transportation for temporary construction work within State and Federal roadway rights-of-way.

• *Stream Alteration Permit.* The project would require coordination and permits with the Utah Division of Water Rights for the proposed canal improvements.

• *National Historic Preservation Act (NHPA) Section 106.* Consultation with Tribal Nations and interested parties would be conducted as required by the NHPA.

• *Local Encroachment.* Consultation and potential encroachment permits would be required with Logan City, North Logan City, Hyde Park, and Cache County for all construction work within the local roadway rights-of-way.

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public for at least 45 days as required by 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The DEIS is anticipated to be published in the **Federal Register**, approximately 21 months after publication of this NOI. A Final EIS is anticipated to be published within 3 months of completion of the public comment period for the DEIS.

NRCS will decide whether to implement one of the action alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official and decision maker for NRCS is the Utah State Conservationist.

Public Scoping Process

Federal, State, Tribal, local agencies and representatives, and the public were invited to take part in this watershed plan scoping period through which coordination, sought input on issues of economic, environmental, cultural, and social importance in the watershed.

The Logan River Watershed Project began in 2020 when key stakeholders identified resource concerns within the Logan River Watershed. A virtual public scoping meeting was held on January 28, 2021, and an adjacent property owner scoping meeting was held on March 4, 2021, to gather input on concerns and interests and to inform alternative development and prioritization for the watershed. The public submitted 781 comments, of which the majority emphasized the importance of protecting existing water rights and maintaining water flows that preserve the aesthetics of Logan River and property values and assure aquatic recreation and water quality for wildlife habitat. Scoping meeting presentation materials are available on the NRCS website, along with project background information at *https://www.nrcs.usda.gov/logan-river-watershed-project.*

Based on funding limitations, the NRCS determined an EIS was necessary, and is seeking further public comment to help determine the range of actions, alternatives, and impacts to be evaluated and included in the EIS. NRCS will include the comments received from the previous scoping efforts into the EIS analysis.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, consulting parties, and individuals that have special expertise, legal jurisdiction, or interest in the Logan River project to provide written comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action.

NRCS will coordinate the scoping process to correspond with any required NHPA processes, as allowed in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108). The information about historic

and cultural resources within the area potentially affected by the proposed Logan River project will assist NRCS in identifying and evaluating impacts to such resources in the context of both the National Environmental Policy Act (NEPA) and NHPA.

NRCS will consult with Native American tribes on a government-to-government basis in accordance with 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic properties, will be given due consideration.

Authorities

This document is published pursuant to the NEPA regulations regarding publication of a NOI to issue an EIS (40 CFR 1501.9(d)). Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, and the Flood Control Act of 1944.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing [1] to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This Logan River project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Emily Fife,

Utah State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2024–05091 Filed 3–8–24; 8:45 am]

BILLING CODE 3410–16–P

[1] See *https://sam.gov/content/assistance-listings.*

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Quarterly Services Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 8, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Quarterly Services Survey.

OMB Control Number: 0607–0907.

Form Number(s): QSS–1A, QSS–1E, QSS–1PA, QSS–1PE, QSS–2A, QSS–2E, QSS–3A, QSS–3E, QSS–3SA, QSS–3SE, QSS–5A, QSS–5E, QSS–4A, QSS–4E, QSS–4FA, QSS–4FE, QSS–4SA, QSS–4SE.

Type of Request: Regular submission, Request for an Extension, without change, of a currently approved collection.

Number of Respondents: 24,200.

Average Hours per Response: 10 minutes: QSS–1A, QSS–1E, QSS–1PA, QSS–1PE, QSS–2A, QSS–2E, QSS–3A, QSS–3E, QSS–3SA, QSS–3SE, QSS–5A, QSS–5E. 15 minutes: QSS–4A, QSS–4E, QSS–4FA, QSS–4FE, QSS–4SA, QSS–4SE.

Burden Hours: 20,700.

Needs and Uses: The U.S. Census Bureau requests an extension, without change, of the Quarterly Services Survey (QSS). In the 1980s, it was determined that the service economy, despite its growing importance and share of Gross Domestic Product (GDP), was not adequately covered by the existing federal statistical programs. At the time, the only services data available came from the Service Annual Survey (SAS) and the quinquennial Economic Census, therefore the decision was made to create a new principal economic indicator designed to expand upon the Census Bureau's existing annual survey. The QSS was first released in 2004, making it the first new U.S. federal government economic indicator in 30 years. The QSS is now a major source for the development of quarterly GDP and an indicator of short-term economic change.

The initial scope of the QSS was driven primarily by Bureau of Economic Analysis (BEA) priorities and what the budget initiative would allow. The goal was to begin covering the most dynamic sectors of the service economy for which BEA had little to no alternate source data. In the wake of the dot-com bubble in the early 2000s, it was clear that information services and high-tech industries needed to be a priority as BEA experienced major revisions to their GDP estimates as annual data came in later. At the time it was launched,

QSS produced estimates for just three North American Industry Classification System (NAICS) sectors (51, 54, and 56).

Shortly after the Financial Crisis in 2007–2008, QSS received approval to expand the scope of the survey to match that of the Economic Census of Services. A major part of this expansion would provide for tracking of the financial sector which, of course, was now in the spotlight. Between 2009 and 2010, QSS underwent a multi-phased expansion, increasing the total coverage from three to eleven NAICS sectors.

QSS expanded yet again in 2012 to cover the Accommodation subsector which was the only remaining service industry with no sub-annual coverage.

We currently publish estimates based on the 2012 NAICS. The QSS covers all or parts of the following NAICS sectors: Utilities (excluding government owned); Transportation and warehousing (except rail transportation and postal service); Information; Finance and insurance (except funds, trusts, and other financial vehicles); Real estate and rental and leasing; Professional, scientific, and technical services; Administrative and support and waste management and remediation services; Educational services (except elementary and secondary schools, junior colleges, and colleges, universities, and professional schools); Health care and social assistance; Arts, entertainment, and recreation; Accommodation; and Other services (except public administration). See Section 19 (NAICS Codes Affected) for a list of all of the QSS sectors. The QSS provides the most current official measures of total revenue and percentage of revenue by class of customer (for selected industries) on a quarterly basis. In addition, the QSS provides the most current official quarterly measure of total expenses from tax-exempt firms in industries that have a large not-for-profit component. All respondent data are received by mail, telephone, or internet reporting.

The total revenue estimates produced from the QSS provide current trends of economic activity in the service industry in the United States from service providers with paid employees.

In addition to revenue, we also collect total expenses from tax-exempt firms in industries that have a large not-for-profit component. Expenses provide a better measure of the economic activity of these firms. Expense estimates produced by the QSS, in addition to inpatient days and discharges for the hospital industry, are used by the Centers for Medicare and Medicaid Services (CMS) to project and study hospital regulation, Medicare payment adequacy, and other related projects. For select industries in the Arts, entertainment, and recreation sector, the survey produces estimates of admissions revenue.

Beginning with the release of 2016 fourth quarter estimates on February 17, 2017, the first Advance Quarterly Services Report was released in an effort to meet data users' needs for more timely data. Published approximately 50 days following the end of the quarter, the Advance Quarterly Services Report contains a snapshot of quarterly estimates of revenue for selected sectors, subsectors, and industries on a not seasonally adjusted basis. Our research found that these selected levels were good predictors of the estimates published in the full quarterly services report.

Beginning with the release of the 2019 first quarter estimates, originally published on May 17, 2019, the Advance Quarterly Services Report includes a seasonally adjusted estimate for the Selected Services Total. With the release of the 2021 fourth quarter estimates, on March 11, 2022, the Quarterly Services Report now includes 135 seasonally adjusted revenue series. Additionally, with the release of the 2022 fourth quarter estimates, on March 14, 2023, the Quarterly Services Report includes seasonally adjusted expenses estimates for 40 selected industries. Seasonal adjustment is the process of estimating and removing seasonal effects from a time series in order to better reveal certain non-seasonal features. Many data users prefer seasonally adjusted data because they want to see those characteristics that seasonal movements tend to mask, especially changes in the direction of the series.

Reliable measures of economic activity are essential to an objective assessment of the need for, and impact of, a wide range of public policy decisions. The QSS supports these measures by providing the latest estimates of service industry output on a quarterly basis.

Currently, the U.S. Census Bureau collects, tabulates, and publishes estimates to provide, with measurable reliability, statistics on domestic service total revenue, total expenses, and percentage of revenue by class of customer for select service providers. In addition, the QSS produces estimates for inpatient days and discharges for hospitals.

The BEA is the primary Federal user of QSS results. The BEA utilizes the QSS estimates to make improvements to the national accounts for service industries. In the National Income and Product Accounts (NIPA), the QSS estimates allow more accurate estimates of both Personal Consumption Expenditures (PCE) and private fixed investment. For example, published revisions to the quarterly NIPA estimates are often the result of incorporation of the latest source data from the QSS. Revenue estimates from the QSS are also used to produce estimates of gross output by industry that allow BEA to produce a much earlier release of the gross domestic product by industry estimates.

Estimates produced from the QSS are used by the BEA as a component of quarterly GDP estimates. The estimates also provide the Federal Reserve Board (FRB) and Council of Economic Advisors (CEA) with timely information on current economic performance.

The CMS uses the QSS estimates to develop hospital spending estimates in the National Health Expenditure Accounts. In addition, the QSS estimates improve their ability to analyze changes in spending trends for hospitals and other healthcare services. The CMS also uses the estimates in its ten-year health spending forecast estimates and in studies related to Medicare policy and trends.

Estimates collected from this survey are used for market research, industry growth, business planning, economic policy decisions, and forecasting by various government agencies and departments; private businesses; investors; trade organizations; professional associations; academia; and other various business research and analysis organizations.

Private sector data users and other government agencies both benefit from an earlier release of U.S. services data. The Advance Quarterly Services Report allows policymakers and private data users to make data-driven decisions sooner due to this high-level snapshot of economic data. In addition, the release also allows the BEA to incorporate services data into the second estimate of the GDP. Prior to the implementation of the Advance Quarterly Services Report, Quarterly Services Survey estimates were incorporated in the third estimate of GDP.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be

submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0907.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05042 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2023]

Foreign-Trade Zone (FTZ) 61; Authorization of Production Activity; AIAC International Pharma, LLC; (Pharmaceutical Products); Arecibo, Puerto Rico

On November 7, 2023, AIAC International Pharma, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 61D, in Arecibo, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 77952, November 14, 2023). On March 6, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 6, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–05113 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Open Meeting—Virtual

The Materials and Equipment Technical Advisory Committee will meet on March 26, 2024, 10 a.m., eastern daylight time. This meeting will be virtual via MS Teams. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Presentation on 2B350 Manufactured Equipment
3. Presentations from METAC members.
4. Report from working groups.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than March 19, 2024.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

For more information, contact Ms. Springer.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–05109 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–833]

Utility Scale Wind Towers From Indonesia: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that PT. Kenertec Power System (Kenertec) made sales of subject merchandise at less than normal value during the period of review (POR), August 1, 2021, through July 31, 2022.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6334.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2023, Commerce published in the **Federal Register** the *Preliminary Results* of the 2021–2022 administrative review [1] of the antidumping duty order on utility scale wind towers from Indonesia.[2] This review covers one producer/exporter of the subject merchandise, Kenertec. We invited interested parties to comment on the *Preliminary Results*.[3] On October 10, 2023, we received case briefs from Kenertec and the Wind Tower Trade Coalition (*i.e.,* the petitioner).[4] On October 24, 2023, we received rebuttal briefs from Kenertec and the petitioner.[5] On December 26, 2023, Commerce extended the deadline for the final results of review until March 5, 2024.[6] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[7] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order* is certain wind towers, whether or not tapered, and sections thereof, from Indonesia. Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the

[1] *See Utility Scale Wind Towers from Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 61523 (September 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 85 FR 52546 (August 26, 2020), as corrected in *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders,* 85 FR 56213 (September 11, 2020) (collectively, *Order*).

[3] *See Preliminary Results,* 88 FR 61525.

[4] *See* Kenertec's Letter, ''Kenertec's Affirmative Brief,'' dated October 10, 2023; and Petitioner's Letter, ''Case Brief,'' dated October 10, 2023.

[5] *See* Kenertec's Letter, ''Kenertec's Rebuttal Brief,'' dated October 24, 2023; and Petitioner's Letter, ''Rebuttal Brief,'' dated October 24, 2023.

[6] *See* Memorandum, ''Utility Scale Wind Towers from Indonesia: Extension of the Deadline for Final Results of Antidumping Duty Administrative Review,'' dated December 26, 2023.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.[8]

Analysis of Comments Received

All issues raised in case and rebuttal briefs by interested parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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 Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the weighted-average dumping margin calculation for Kenertec for the final results of review.[9]

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margin exists for the period August 1, 2021, through July 31, 2022:

Exporter or producer	Weighted-average dumping margin (percent)
PT. Kenertec Power System	1.78

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), 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 the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Kenertec for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate established in the less-than-fair-value (LTFV) investigation of 8.53 percent *ad valorem,*[10] if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for the company subject to this review will be equal to the weighted-average dumping margin established in these finals results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.53 percent, the all-others rate established in the LTFV investigation for this proceeding.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

[8] For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum at 2–3.

[9] *Id.*

[10] *See Utility Scale Wind Towers from Indonesia: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 85 FR 40231, 40232 (July 6, 2020).

[11] *Id.*

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–05064 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–853, C–533–925, C–518–002, C–274–811]

Melamine From Germany, India, Qatar, and Trinidad and Tobago: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 5, 2024.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Faris Montgomery (Germany), Paul Kebker or Dylan Hill (India), Sofia Pedrelli (Qatar), and Colin Thrasher (Trinidad and Tobago), AD/CVD Operations, Offices VIII, IV, II, and V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068, (202) 482–1537, (202) 482–2254, (202) 482–1197, (202) 482–4310, or (202) 482–3004, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On February 14, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of melamine from Germany, India, Qatar, and Trinidad and Tobago filed in proper form on behalf of Cornerstone Chemical Company (the petitioner).[1] The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago.[2]

Between February 16 and 20, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] Between February 22 and 26, 2024, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Germany (GOG), the Government of India (GOI), the Government of Qatar (GOQ), and the Government of Trinidad and Tobago (GOTT) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of melamine from Germany, India, Qatar, and Trinidad and Tobago, respectively, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing melamine in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[5]

Periods of Investigation

Because the Petitions were filed on February 14, 2024, the periods of investigation (POI) for Germany, India, Qatar, and Trinidad and Tobago are January 1, 2023, through December 31, 2023.[6]

Scope of the Investigations

The merchandise covered by these investigations is melamine from Germany, India, Qatar, and Trinidad and Tobago. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On February 16, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On February 22, 2024 the petitioner provided clarifications and revised the scope.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these revisions.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated February 14, 2024 (the Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Melamine from the Federal Republic of Germany: Supplemental Questions,'' dated February 20, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Melamine from India: Supplemental Questions,'' dated February 20, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Melamine from the State of Qatar: Supplemental Questions,'' dated February 16, 2024; and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Supplemental Questions,'' dated February 16, 2024 (General Issues Questionnaire).

[4] *See* Petitioner's Letters, ''Petitioner's Response to Volume I General Issues Supplemental Questionnaire,'' dated February 22, 2024 (General Issues Supplement); ''Petitioner's Response to Volume VIII Supplemental Questionnaire (Germany Countervailing Duties),'' dated February 23, 2024 (Germany CVD Supplement); ''Petitioner's Response to Volume IX Supplemental Questionnaire (India Countervailing Duties),'' dated February 26, 2024; and ''Petitioner's Response to Volume X Supplemental Questionnaire (Qatar Countervailing Duties),'' dated February 22, 2024.

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* General Issues Questionnaire.

[8] *See* General Issues Supplement at 5–8.

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

public information.[10] To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on March 25, 2024, which is 20 calendar days from the signature date of this notice.[11] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 4, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[13] Commerce held consultations with the GOTT on February 23, 2024,[14] the GOG and the European Union Commission on February 28, 2024,[15] and the GOI on March 4, 2024.[16] The GOQ did not request consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[19] Based on our analysis of the information submitted on the record, we have determined that melamine, as described in the domestic like product definition set forth in the Petitions, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[20]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023.[21] The petitioner states that there are no other known producers of melamine in the United States and provided information to support its claim; therefore, the Petitions are supported by 100 percent of the U.S. industry.[22] We relied on data provided by the petitioner for purposes of measuring industry support.[23]

Our review of the data provided in the Petitions and other information readily

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See* 19 CFR 351.303(b)(1).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[13] *See* Commerce's Letters, ''Countervailing Duty Petition on Melamine from the Federal Republic of Germany: Invitation for Consultations,'' dated February 15, 2024; ''Invitation for Consultations to Discuss the Countervailing Duty Petition on Melamine from India,'' dated February 15, 2024; ''Countervailing Duty Petition on Melamine from the State of Qatar: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated February 15, 2024; and ''Countervailing Duty Petition on Melamine from Trinidad and Tobago,'' dated February 15, 2024.

[14] *See* Memorandum, ''Consultations with Officials from the Government of Trinidad and Tobago,'' dated February 23, 2024.

[15] *See* Memorandum, ''Consultations with Officials from the Government of Germany and the European Union,'' dated February 28, 2024.

[16] *See* Memorandum, ''Consultations with Officials from the Government of India,'' dated March 4, 2024.

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[19] *See* Petitions at Volume I (pages 14–17 and Exhibits I–3 through I–5, I–21, and I–22).

[20] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* CVD Investigation Initiation Checklists: Melamine from Germany, India, Qatar, and Trinidad and Tobago, dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago (Attachment II). These checklists are on file electronically via ACCESS.

[21] *See* Petitions at Volume I (page 5 and Exhibit I–1).

[22] *Id.* at 5 and Exhibits I–1, I–3 and I–8.

[23] *Id.* For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

available to Commerce indicates that the petitioner has established industry support for the Petitions.[24] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[27] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[28]

Injury Test

Because Germany, India, Qatar, and Trinidad and Tobago are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Germany, India, Qatar, and/or Trinidad and Tobago materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from Germany, India, Qatar, and Trinidad and Tobago exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29]

The petitioner contends that the industry's injured condition is illustrated by the significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; decline in shipments, production, and capacity utilization; and adverse effect on financial performance.[30] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[31] In accordance with section 771(7)(G)(ii)(III) of the Act, which provides an exception to the mandatory cumulation provision for imports from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), we considered the petitioner's allegation of injury with respect to Trinidad and Tobago, a designated beneficiary under CBERA, independently of the allegations for Germany, India, and Qatar, and found that the information provided satisfies the requirements for initiation.[32]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of melamine from Germany, India, Qatar, and Trinidad and Tobago benefit from countervailable subsidies conferred by the GOG, GOI, GOQ, and GOTT, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

Germany

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 11 of the programs alleged by the petitioner.[33] For a full discussion of the basis for our decision to initiate on each program, *see* the Germany CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 19 of the programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Qatar

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all seven programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Qatar CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Trinidad and Tobago

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on both of the programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Trinidad and Tobago CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioner identified one company in Germany (*i.e.,* LAT Nitrogen Piesteritz GmbH), one company in India (*i.e.,* Gujarat State Fertilizer and Chemicals Limited), two companies in Qatar (*i.e.,* Qatar Melamine Company; and Muntajat Qatar Chemical and Petrochemical Marketing and Distribution Company), and one company in Trinidad and Tobago (*i.e.,* Methanol Holdings (Trinidad) Limited) as producers and/or exporters of melamine and provided independent third-party information as

[24] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[25] *Id.; see also* section 702(c)(4)(D) of the Act.

[26] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[27] *Id.*

[28] *Id.*

[29] *See* Petitions at Volume I (pages 17–18 and Exhibit I–23).

[30] *See* Petitions at Volume I (pages 1–3, 17–40 and Exhibits I–1, I–3 through I–5, I–8, I–13, and I–23 through I–31).

[31] *See* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago.

[32] *Id.*

[33] We note that the petitioner withdrew an allegation for one program in the Petition, the Special Equalization Scheme (SES)—Reduced Surcharge Under the KWKG program. *See* Germany CVD Supplement at 10.

support.[34] We currently know of no additional producers/exporters of melamine products from Germany, India, Qatar, and Trinidad and Tobago.

Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.,* the companies cited above). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters in Germany, India, Qatar, and Trinidad and Tobago, if no comments are received or if comments received further support the existence of only these producers/exporters in Germany, India, Qatar, and Trinidad and Tobago, respectively, we do not intend to conduct respondent selection and will proceed to issuing the initial CVD questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOG, GOI, GOQ, and GOTT via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions was filed, whether there is a reasonable indication that imports of melamine from Germany, India, Qatar, and/or Trinidad and Tobago are materially injuring, or threatening material injury to, a U.S. industry.[35] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[36] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [37] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[38] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[39] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[40]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[41] Parties must use the certification formats provided in 19 CFR 351.303(g).[42] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[43]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

[34] *See* Petition at Volume I (page 13 and Exhibit I–18).

[35] *See* section 703(a)(1) of the Act.

[36] *Id.*

[37] *See* 19 CFR 351.301(b).

[38] *See* 19 CFR 351.301(b)(2).

[39] *See* 19 CFR 351.302.

[40] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[41] *See* section 782(b) of the Act.

[42] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[43] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to these investigations is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula $C_3 H_6 N_6$). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6- triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2024–05126 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–818]

Ripe Olives From Spain: Final Results of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producer and exporters of ripe olives from Spain received countervailable subsidies during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dusten Hom or Theodore Pearson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2023, Commerce published the *Preliminary Results* of the 2021 administrative review of the countervailing duty order on ripe olives from Spain and invited comments from interested parties.[1] On December 7, 2023, Commerce extended the deadline for issuing the final results until March 5, 2024.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the *Order* are ripe olives from Spain. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD 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 Since the Preliminary Results

Based on comments received from interested parties, we revised the calculation of the net countervailable subsidy rates for Agro Sevilla Aceitunas, S.Coop.And. (Agro Sevilla). For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of Act. For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including our reliance, in part, on facts otherwise available, pursuant to sections 776 of the Act.

Non-Selected Companies' Rate

We made no changes to the methodology for determining a rate for Aceitunas Guadalquivir, S.L. (Guadalquivir), the only company not selected for individual examination from the *Preliminary Results.* However, due to changes in the benefit calculations for Agro Sevilla, the non-selected rate changed for Guadalquivir. For Guadalquivir, we are applying an *ad valorem* subsidy rate of 8.14 percent.

Final Results of the Administrative Review

We find the following net countervailable subsidy rates for the POR January 1, 2021, through December 31, 2021:

[1] *See Ripe Olives from Spain: Preliminary Results of Countervailing Duty Administrative Review, and Partial Rescission of Review; 2021,* 88 FR 61517 (September 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the Countervailing Duty Administrative Review,'' dated December 7, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Ripe Olives from Spain; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Producer/exporter	Subsidy rate (percent *ad valorem*)
Agro Sevilla Aceitunas, S.Coop.And	7.51
Angel Camacho Alimentación, S.L. and its cross-owned affiliates[5]	9.12
Review-Specific Average Rate Applicable to the Following Companies[6]	
Aceitunas Guadalquivir, S.L.[7]	8.14

Disclosure

We intend to disclose the calculations and analysis performed for these final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–05112 Filed 3–8–24; 8:45 am]

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[5] Commerce found the following companies to be cross-owned with Angel Camacho Alim entación, S.L.: Grupo Angel Camacho, S.L., Cuarterola S.L., and Cucanoche S.L.

[6] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 705(c)(5)(A) of the Act.

[7] Commerce has previously found, and continues to treat, the following companies to be cross-owned with Aceitunas Guadalquivir, S.L.U.: Coromar Inversiones, S.L., AG Explotaciones Agricolas, S.L.U., and Grupo Aceitunas Guadalquivir, S.L. *See, e.g., Ripe Olives from Spain: Final Results of Countervailing Duty Administrative Review; 2020; Correction,* 88 FR 21973 (April 12, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On January 22, 2024, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on certain frozen warmwater shrimp from India. For these final results, Commerce continues to find that Elque Ventures Private Limited (Elque Ventures) is the successor-in-interest to Elque & Co.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Herawe Kebede, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4312.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2024, Commerce published the preliminary results of this expedited CCR, determining that Elque Ventures is the successor-in-interest to Elque & Co. for purposes of determining AD cash deposits and liabilities, and provided all interested parties with an opportunity to comment.[1] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.*

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 0306.17.00.03, 0306.17.00.04, 0306.17.00.05, 0306.17.00.06, 0306.17.00.07, 0306.17.00.08, 0306.17.00.09, 0306.17.00.10, 0306.17.00.11, 0306.17.00.12, 0306.17.00.13, 0306.17.00.14, 0306.17.00.15, 0306.17.00.16, 0306.17.00.17, 0306.17.00.18, 0306.17.00.19, 0306.17.00.20, 0306.17.00.21, 0306.17.00.22, 0306.17.00.23,

[1] *See Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 89 FR 3907 (January 22, 2024) (*Preliminary Results*).

0306.17.00.24, 0306.17.00.25, 0306.17.00.26, 0306.17.00.27, 0306.17.00.28, 0306.17.00.29, 0306.17.00.40, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive. For a complete description of the scope of the order, *see* the *Preliminary Results.*

Final Results of CCR

For the reasons stated in the *Preliminary Results,* and because we received no comments from interested parties challenging our preliminary finding, Commerce continues to find that Elque Ventures is the successor-in-interest to Elque & Co. As a result of this determination and consistent with our established practice, we find that Elque Ventures should receive the AD cash deposit rate previously assigned to Elque & Co. as part of the Elque Group.[2] Because there are no changes from the *Preliminary Results,* there is no decision memorandum accompanying this notice and we are adopting the *Preliminary Results* as the final results of this CCR.

Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by Elque Ventures and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 3.88 percent, which is the current AD cash deposit rate for Elque & Co. as part of the Elque Group.[3] This cash deposit requirement shall remain in effect until further notice.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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.

[2] The Elque Group previously consisted of Elque & Co., Calcutta Seafoods Pvt. Ltd. (Calcutta Seafoods), and Bay Seafood Pvt. Ltd. (Bay Seafood). We now find that the Elque Group consists of EVPL, Calcutta Seafoods, and Bay Seafood.

[3] *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 60431 (September 1, 2023).

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–05110 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–861]

Aluminum Extrusions From Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of aluminum extrusions from Mexico. The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Christopher Williams, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–5166, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On October 31, 2023, Commerce published in the **Federal Register** the notice of initiation of this countervailing duty (CVD) investigation.[1] On December 6, 2023, Commerce postponed the preliminary determination of this investigation until March 4, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are aluminum extrusions from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.* , scope).[5] To date, numerous interested parties have commented on the scope of the investigation as it appeared in the *Initiation Notice.* (Separately, on February 20, 2024, the petitioners[6] proposed that Commerce modify the scope of the investigation.[7] For further

[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023) (Initiation Notice).

[2] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 84788 (December 6, 2023).

[3] *See* Memorandum, ≥Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Extrusions from Mexico,≥ dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR 74434.

[6] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[7] *See* Petitioners' Letter, ''Revised Scope Language,'' dated February 20, 2024 (Petitioners' February 20, 2024 Submission).

discussion of this latter submission, see below.) All parties agree that a number of products are excluded from the scope of this investigation, and, after analyzing the comments from these parties, Commerce preliminarily finds that these products are not subject merchandise.[8] As a result, Commerce has preliminarily determined to modify the scope of this investigation to add two examples of excluded products (*i.e.*, solar panels and off-grid solar modules), as well as to exclude precision non-electrically conductive coated buss bars and precision drawn aluminum tubing. See the scope in Appendix I to this notice. For further discussion, see the Preliminary Scope Decision Memorandum.[9]

Additionally, Commerce preliminary determines that the scope language in paragraph eight of the scope as it appeared in the *Initiation Notice*, ''so long as they remain subject to the scope of such orders,'' has the potential to result in the future expansion of the scope of this order, if it is put in place. We have removed this language from the scope for the preliminary determination for this reason, and Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* accordingly. *See* the scope in Appendix I to this notice.

Finally, as noted above, in comments dated February 20, 2024, the petitioners proposed several substantive modifications to the scope of this investigation, as well as the scope in the companion antidumping duty (AD) and CVD investigations.[10] In particular, the petitioners proposed, for the first time, that Commerce:

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(2) add the following three-part test to determine whether products containing multiple subassemblies are excluded from the scope:

The scope also excludes merchandise containing multiple subassemblies of a larger whole with non-extruded aluminum components beyond fasteners. A covered subassembly, including any product expressly identified as subject merchandise in this scope, can only be excluded if it is fully and permanently assembled with at least one other different subassembly, and where (1) at least one of the subassemblies, if entered individually, would not itself be subject to the scope; (2) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the actual weight of the combined multiple subassemblies; and (3) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the number of pieces of the combined multiple subassemblies; and

(3) modify the definition of ''assembled merchandise'' to add the term ''fully and permanently assembled''; to add the word ''whole''; to add the phrase ''with the exception of consumable parts or material or interchangeable media or tooling''; to remove the phrase ''product or system''; and to remove the phrase ''regardless of whether the additional parts or materials are interchangeable.'' This paragraph now reads:

The scope excludes fully and permanently assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger whole and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material (with the exception of consumable parts or material or interchangeable media or tooling).

Given that these proposed modifications are complex and the petitioners requested them close in time to the CVD preliminary determination, Commerce has had insufficient time to evaluate them fully. We intend to request that the petitioners clarify certain aspects of the revised language after the issuance of this preliminary determination, and also to allow all interested parties the opportunity to comment on the proposed revisions and any clarifications provided by the petitioners.[11] We will address these comments and make a determination as to the appropriateness of adopting the proposed languages no later than May 1, 2024, the date of the preliminary determinations in the companion less-than-fair-value investigations.

We also intend to issue our preliminary decision regarding the remaining scope comments received from interested parties in response to the comment period set forth in the *Initiation Notice* no later than May 1, 2024, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decisions at that time.

We intend to incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[12]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent less-than-fair value (LTFV) investigation of aluminum extrusions from Mexico based on a request made by the petitioners.[13] Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently

[8] These products are: (1) fully assembled solar panels; (2) fully assembled off-grid solar charging modules; (3) aluminum and copper wires produced through a casting process; (4) stationary bicycles and rowing machines that enter unassembled as a packaged combination of parts to be assembled; (5) shower hooks and other articles made from cast aluminum, even where such cast aluminum is made from re-melted aluminum that had previously been extruded; and (6) precision non-electrically conductive coated buss bars and precision drawn aluminum tubing.

[9] *See* Memorandum, ''Antidumping Duty Investigations and Countervailing Duty Investigations of Aluminum Extrusions from People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[10] *See* Petitioners' February 20, 2024 Submission. We are considering all the proposed revisions to the scope and have only highlighted a few examples of these proposed revisions.

[11] *See* Memorandum,''Scope Comment Schedule,'' dated March 1, 2024 (citing Petitioners' February 20, 2024 Submission).

[12] The deadline for interested parties to submit scope case and rebuttal briefs will be established at a later time.

[13] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. See Petitioners' Letter, ''Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated February 13, 2024.

scheduled to be issued no later than July 15, 2024, unless postponed.[14]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated individual estimated countervailable subsidy rates for Aluminio de Baja California S.A. de C.V. (ABC) and Aluminio Texcoco S.A. de C.V. (ALUTEX). The individually calculated rate for ABC is above *de minimis*. Because the individually calculated rate for ALUTEX is *de minimis* and the other rates we assigned are based entirely under section 776 of the Act, the estimated weighted-average rate calculated for ABC is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Rate for Non-Responsive Companies

Three potential producers and/or exporters of aluminum extrusions from Mexico received but did not respond to Commerce's quantity and value (Q&V) questionnaire.[15] We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding.[16] Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these three companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, the three companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the three companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Aluminio de Baja California S.A. de C.V.[17]	1.68
Aluminio Texcoco S.A. de C.V.[18]	0.19
Merit Aluminum Corporation	77.82
Merit Stamping	77.82
Tubos y Perfiles de Aluminio	77.82
All Others	1.68

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for ALUTEX is *de minimis*, Commerce is directing CBP not to suspend liquidation of entries of the merchandise from this company.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs related to the preliminary scope decisions made in this investigation. The deadlines to submit scope case and rebuttal briefs will be provided at a later time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing companion AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[19] Interested parties who submit case briefs or rebuttal briefs in this investigation must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[20]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[21] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations

[14] *See Aluminum Extrusions from the People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11814 (February 15, 2024).

[15] *See* Memorandum, ''Quantity and Value Questionnaire Delivery Memorandum,'' dated November 13, 2023.

[16] These companies are Merit Aluminum Corporation, Merit Stamping, and Tubos y Perfiles de Aluminio.

[17] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following company to be cross-owned with Aluminio de Baja California S.A. de C.V.: Transformadora ABC, S.A. de C.V.

[18] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following companies to be cross-owned with Aluminio Texcoco S.A. de C.V.: Extrusiones Metaálicas S.A. de C.V., NEO Aluminio, S.A. de C.V., and Fundi-met, S.A. de C.V.

[19] See 19 CFR 351.309(d); see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings, 88 FR 67069, 67077 (September 29, 2023) (APO and Service Final Rule).

[20] See 19 351.309(c)(2) and (d)(2).

[21] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[22]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice in the **Federal Register.** Requests should contain the party's name, address, telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from Mexico are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight.

The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.,* pressed through a die).

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.* , without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation.

The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components.

Aluminum extrusions may be heat sinks, which are fabricated aluminum extrusions that dissipate heat away from a heat source and may serve other functions, such as structural functions. Heat sinks come in a variety of sizes and shapes, including but not limited to a flat electronic heat sink, which is a solid aluminum extrusion with at least one flat side used to mount electronic or mechanical devices; a heat sink that is a housing for electronic controls or motors; lighting heat sinks, which dissipate heat away from LED devices; and process and exchange heat sinks, which are tube extrusions with fins or plates used to hold radiator tubing. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. For purposes of the investigation on aluminum extrusions from the People's Republic of China, only heat sinks designed and produced around meeting specified thermal performance requirements and tested to comply with such requirements are included in the scope.

Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety.

The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. Parts or subassemblies described by this paragraph that are subject to duties in their entirety pursuant to existing antidumping and countervailing duty orders are excluded from the scope of this investigation. Any part or subassembly that otherwise meets the requirements of this scope and that is not covered by other antidumping and/or countervailing duty orders remains subject to the scope of the investigation.

[22] See APO and Service Final Rule.

The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable.

The scope also excludes merchandise containing non-extruded aluminum components beyond fasteners that is not apart or subassembly of a larger product or system that enters unassembled as a packaged combination of parts to be assembled as is for its intended use, without undergoing after importation any processing, fabrication, or finishing or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. To be excluded under this paragraph, the merchandise must be sold and enter as a discrete kit on one Customs entry form.

Examples of such excluded assembled and unassembled merchandise include windows with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels and solar modules.

The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions.

The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight.

The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also excludes unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association (not including proprietary equivalents or other certifying body equivalents) where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm; (2) outer diameter of 11.0 mm or 12.7 mm; and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope are extruded drawn solid profiles made from an aluminum alloy with the Aluminum Association series designation commencing with the number 1, 3, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) solid cross sectional area greater than 62.4 mm2 and less than 906 mm2, (2) minimum electrical conductivity of 58% of the international annealed copper standard (IACS) or maximum resistivity of 2.97 Ω/cm, (3) a uniformly applied non-electrically conductive temperature-resistant coating co-extruded over characteristic (1) of either polyamide, cross-linked polyethylene, or silicone rubber material which meets the following standards: (a) Vicat A temperature threshold of >140 degrees Celsius, (b) flammability requirements of UL 94V–0, and (c) a minimum coating thickness of 0.10 mm and maximum coating thickness of 2.0 mm, with a maximum thickness tolerance of +/−0.20 mm, (4) characteristic 3 may or may not be encapsulated with a ''Precision Drawn Tubing,'' wall thicknesses less than 1.2mm, which is mechanically fixed in place, and (5) packaged in straight lengths, bent or formed and/or attached to hardware.

Also excluded from the scope are extruded tubing and drawn over a ID plug and through a OD die made from an aluminum alloy with the Aluminum Association series designation commencing with the number 3, 5, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) an outside mean diameter no greater than 30 mm with a tolerance less than or equal to +/−0.10 mm, (2) uniform wall thickness no greater than 2.7 mm with wall tolerances less than or equal to +/−0.1 mm, (3) may be coated with materials, including zinc, such that the coating material weight is no less than 3 g/m2 and no greater than 30 g/m2, and (4) packaged in continuous coils, straight lengths, bent or formed.

Also excluded from the scope of the investigation is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370 (not including proprietary equivalents or other certifying body equivalents), with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7605.19.0000, 7604.10.5000, or 7616.99.5190.

Also excluded from the scope of the antidumping and countervailing duty investigations on aluminum extrusions from the People's Republic of China are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30,650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30,653 (May 26, 2011) (collectively, Aluminum Extrusions from the People's Republic of China). Solely for the investigations on aluminum extrusions from the People's Republic of China, the following is an exhaustive list of products that meet the definition of subject merchandise. Merchandise that is not included in the following list that meets the definition of subject merchandise in the 2011 antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China remains subject to the earlier orders. No other section of this scope language that provides examples of subject merchandise is exhaustive. The following products are included in the scope of these investigations on aluminum extrusions from the People's Republic of China, whether assembled or unassembled: heat sinks as described above; cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments; flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles; air duct registers; outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems; door threshold

and sill assemblies; highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.

Imports of the subject merchandise are primarily provided for under the following categories of the HTSUS: 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080.

Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.3000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8547.90.0020; 8547.90.0030; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9031.90.9195; 9401.99.9081; 9403.99.1040; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; 9547.90.0040; and 9603.90.8050.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–05068 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) August 1, 2021, through July 31, 2022.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dusten Hom or Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–5075 and (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2023, Commerce published the *Preliminary Results* of the 2021–2022 administrative review of the antidumping duty order on ripe olives from Spain and invited comments from interested parties.[1] On December 14, 2023, Commerce extended the deadline for issuing the final results until March 5, 2024.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The products covered by the *Order* are ripe olives from Spain. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

The issue raised by the interested parties in their case and rebuttal briefs is addressed in the Issues and Decision Memorandum. The topics discussed and the issue raised by parties to which we responded in the Issues and Decision Memorandum is listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received from interested parties, we made no changes to the *Preliminary Results.* For a more detailed discussion of the issue raised by parties, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and our 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

[1] *See Ripe Olives from Spain: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2021–2022,* 88 FR 62052 (September 8, 2023) *(Preliminary Results),* and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the Antidumping Duty Administrative Review,'' dated December 14, 2023.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Ripe Olives from Spain; 2021–2022,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[4] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018); *see also Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order,* 83 FR 39691 (August 10, 2018) (collectively, *Order*).

[5] *See* Issues and Decision Memorandum.

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, in the final results of review, we are assigning to the companies not individually examined, listed in the chart below, an estimated weighted-average dumping margin based on the average of Agro Sevilla Aceitunas, S. Coop.And.'s (Agro Sevilla), and Angel Camacho Alimentación, S.L.'s (Camacho) rates weighted by their publicly available ranged U.S. sales values.

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period August 1, 2021, through July 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S.Coop.And	2.42
Angel Camacho Alimentación, S.L	2.35
Aceitunas Guadalquivir, S.L	2.39
Aceitunera del Norte de Cáceres, S.Coop.Ltda. de 2 Grado	2.39
Alimentary Group DCOOP, S.COOP.And	2.39
Internacional Olivarera, S.A	2.39

Disclosure

Because we have not modified our analysis to the *Preliminary Results,* we are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for the final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because the weighted-average dumping margins for Agro Sevilla and Camacho are not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we calculated an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[7]

For all non-selected separate rate applicants subject to this review, we will instruct CBP to liquidate all entries of subject merchandise that entered the United States during the POR at the average of the rates calculated for Agro Sevilla and Camacho as listed above. For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of ripe olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,[9] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

[6] In these final results, Commerce applied the assessment rate calculation method adopted 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).

[7] *See* section 751(a)(2)(C) of the Act.

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 28193 (June 18, 2018).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–05111 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–159]

Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duy Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from the People's Republic of China (China). The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Eliza DeLong, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on October 31, 2023.[1] On December 6, 2023, Commerce postponed the preliminary determination until March 4, 2024.[2]

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are aluminum extrusions from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] To date, numerous interested parties have commented on the scope of the investigation as it appeared in the *Initiation Notice.* (Separately, on February 20, 2024, the petitioners[6] proposed that Commerce modify the scope of the investigation.[7] For further discussion of this latter submission, *see* below.) All parties agree that a number of products are excluded from the scope of this investigation, and, after analyzing the comments from these parties, Commerce preliminarily finds that these products are not subject merchandise.[8] As a result, Commerce has preliminarily determined to modify the scope of this investigation to add two examples of excluded products (*i.e.,* solar panels and off-grid solar modules), as well as to exclude precision non-electrically conductive coated buss bars and precision drawn aluminum tubing. *See* the scope in Appendix I to this notice. For further discussion, *see* the Preliminary Scope Decision Memorandum.[9]

Additionally, Commerce preliminary determines that the scope language in paragraph eight of the scope as it appeared in the *Initiation Notice,* ''so long as they remain subject to the scope of such orders,'' has the potential to result in the future expansion of the scope of this order, if it is put in place. We have removed this language from the scope for the preliminary determination for this reason, and Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* accordingly. *See* the scope in Appendix I to this notice.

Finally, as noted above, in comments dated February 20, 2024, the petitioners proposed several substantive modifications to the scope of this investigation, as well as the scope in the companion antidumping duty (AD) and CVD investigations.[10] In particular, the

[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023) (*Initiation Notice*).

[2] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 84788 (December 6, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 74434.

[6] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[7] *See* Petitioners' Letter, ''Revised Scope Language,'' dated February 20, 2024 (Petitioners' February 20, 2024 Submission).

[8] These products are: (1) fully assembled solar panels; (2) fully assembled off-grid solar charging modules; (3) aluminum and copper wires produced through a casting process; (4) stationary bicycles and rowing machines that enter unassembled as a packaged combination of parts to be assembled; (5) shower hooks and other articles made from cast aluminum, even where such cast aluminum is made from re-melted aluminum that had previously been extruded; and (6) precision non-electrically conductive coated buss bars and precision drawn aluminum tubing.

[9] *See* Memorandum, ''Antidumping Duty Investigations and Countervailing Duty Investigations of Aluminum Extrusions from People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[10] *See* Petitioners' February 20, 2024 Submission. We are considering all the proposed revisions to the scope and have only highlighted a few examples of these proposed revisions.

petitioners proposed, for the first time, that Commerce:

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(2) add the following three-part test to determine whether products containing multiple subassemblies are excluded from the scope:

The scope also excludes merchandise containing multiple subassemblies of a larger whole with non-extruded aluminum components beyond fasteners. A covered subassembly, including any product expressly identified as subject merchandise in this scope, can only be excluded if it is fully and permanently assembled with at least one other different subassembly, and where (1) at least one of the subassemblies, if entered individually, would not itself be subject to the scope; (2) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the actual weight of the combined multiple subassemblies; and (3) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the number of pieces of the combined multiple subassemblies; and

(3) modify the definition of ''assembled merchandise'' to add the term ''fully and permanently assembled''; to add the word ''whole''; to add the phrase ''with the exception of consumable parts or material or interchangeable media or tooling''; to remove the phrase ''product or system''; and to remove the phrase ''regardless of whether the additional parts or materials are interchangeable.'' This paragraph now reads:

The scope excludes fully and permanently assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger whole and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material (with the exception of consumable parts or material or interchangeable media or tooling).

Given that these proposed modifications are complex and the petitioners requested them close in time to the CVD preliminary determination, Commerce has had insufficient time to evaluate them fully. We intend to request that the petitioners clarify certain aspects of the revised language after the issuance of this preliminary determination, and also to allow all interested parties the opportunity to comment on the proposed revisions and any clarifications provided by the petitioners.[11] We will address these comments and make a determination as to the appropriateness of adopting the proposed languages no later than May 1, 2024, the date of the preliminary determinations in the companion less-than-fair-value investigations.

We also intend to issue our preliminary decision regarding the remaining scope comments received from interested parties in response to the comment period set forth in the *Initiation Notice* no later than May 1, 2024, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decisions at that time.

We intend to incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[12]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[13] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that certain of the respondents and the Government of China did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[14] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent AD investigation of aluminum extrusions from China, based on a request made by the petitioners.[15] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 15, 2024, unless postponed.[16]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated an individual estimated countervailable subsidy rate for Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd. (Sanhua), the individually-examined exporter/producer in this investigation for which Commerce is calculating an estimated countervailable subsidy rate.[17] Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Sanhua is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

[11] *See* Memorandum,'' Scope Comment Schedule,'' dated March 1, 2024 (citing Petitioners' February 20, 2024 Submission).

[12] The deadline for interested parties to submit scope case and rebuttal briefs will be established at a later time.

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[14] *See* sections 776(a) and (b) of the Act.

[15] *See* Petitioners' Letter, ''Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated February 13, 2024.

[16] *See Aluminum Extrusions from the People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11814 (February 15, 2024).

[17] Commerce also selected Suzhou Dayer Mechatronic Hi-Tech Co., Ltd. (Suzhou Dayer) as a mandatory company respondent in this investigation. Based on Suzhou Dayer's questionnaire responses, we preliminarily find that Suzhou Dayer did not produce merchandise subject to the scope of this investigation during the POI. Therefore, we are not calculating a subsidy rate for Suzhou Dayer. We intend to verify Suzhou Dayer's submissions to confirm that it did not produce subject merchandise. *See* Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Qingdao Sea Nova Building	169.66
Qingyuan SinoGar Aluminum Co., Ltd	169.66
Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd.[18]	15.41
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd	169.66
Shenzhen SinoGar Aluminum Co., Ltd	169.66
Wenzhou Yongtai Electric Co., Ltd	169.66
Wuxi Rapid Scaffolding (Engineering) Co. Ltd	169.66
Yekalon Industry Inc	169.66
All Others	15.41

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs related to the preliminary scope decisions made in this investigation. The deadlines to submit scope case and rebuttal briefs will be provided at a later time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing companion AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[19] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[20]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[21] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[22]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[23] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from China are

[18] As discussed in the Preliminary Decision Memorandum, Commerce has preliminarily found the following companies to be cross-owned with Sanhua, pursuant to 19 CFR 351.525(b)(6)(vi): Zhejiang Sanhua Intelligent Controls Co., Ltd.; Zhejiang Sanhua Automotive Components Co., Ltd.; Shaoxing Sanhua New Energy Automotive Components Co., Ltd.; Shaoxing Sanhua Automotive Thermal Management Technology Co., Ltd.; and Sanhua Heat Exchanger (Zhengzhou) Co., Ltd.

[19] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[20] *See* 19 CFR 351.309(c)(2) and (d)(2).

[21] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[22] *See APO and Service Final Rule,* 88 FR at 67069.

[23] *See* 19 CFR 351.310(d).

materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 4, 2024.

Ryan Majerus

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Attachment I—Scope of the Investigation

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight.

The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.,* pressed through a die).

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation.

The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components.

Aluminum extrusions may be heat sinks, which are fabricated aluminum extrusions that dissipate heat away from a heat source and may serve other functions, such as structural functions. Heat sinks come in a variety of sizes and shapes, including but not limited to a flat electronic heat sink, which is a solid aluminum extrusion with at least one flat side used to mount electronic or mechanical devices; a heat sink that is a housing for electronic controls or motors; lighting heat sinks, which dissipate heat away from LED devices; and process and exchange heat sinks, which are tube extrusions with fins or plates used to hold radiator tubing. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. For purposes of the investigation on aluminum extrusions from the People's Republic of China, only heat sinks designed and produced around meeting specified thermal performance requirements and tested to comply with such requirements are included in the scope.

Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety.

The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. Parts or subassemblies described by this paragraph that are subject to duties in their entirety pursuant to existing antidumping and countervailing duty orders are excluded from the scope of this investigation. Any part or subassembly that otherwise meets the requirements of this scope and that is not covered by other antidumping and/or countervailing duty orders remains subject to the scope of the investigation.

The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable.

The scope also excludes merchandise containing non-extruded aluminum components beyond fasteners that is not apart or subassembly of a larger product or system that enters unassembled as a packaged combination of parts to be assembled as is for its intended use, without undergoing after importation any processing, fabrication, or finishing or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. To be excluded under this paragraph, the merchandise must be sold and enter as a discrete kit on one Customs entry form.

Examples of such excluded assembled and unassembled merchandise include windows with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels and solar modules.

The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions.

The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight.

The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also excludes unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association (not including proprietary equivalents or other certifying body equivalents) where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm; (2) outer diameter of 11.0 mm or 12.7 mm; and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope are extruded drawn solid profiles made from an aluminum alloy with the Aluminum Association series designation commencing with the number 1, 3, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) solid cross sectional area greater than 62.4 mm2 and less than 906 mm2, (2) minimum electrical conductivity of 58% of the international annealed copper standard (IACS) or maximum resistivity of 2.97 μΩ/cm, (3) a uniformly applied non-electrically conductive temperature-resistant coating co-extruded over characteristic (1) of either polyamide, cross-linked polyethylene, or silicone rubber material which meets the following standards: (a) Vicat A temperature threshold of >140 degrees Celsius, (b) flammability requirements of UL 94V–0, and (c) a minimum coating thickness of 0.10 mm and maximum coating thickness of 2.0 mm, with a maximum thickness tolerance of +/−0.20 mm, (4) characteristic 3 may or may not be encapsulated with a ''Precision Drawn Tubing,'' wall thicknesses less than 1.2mm, which is mechanically fixed in place, and (5) packaged in straight lengths, bent or formed and/or attached to hardware.

Also excluded from the scope are extruded tubing and drawn over a ID plug and through a OD die made from an aluminum alloy with the Aluminum Association series designation commencing with the number 3, 5, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) an outside mean diameter no greater than 30 mm with a tolerance less than or equal to +/−0.10 mm, (2) uniform wall thickness no greater than 2.7 mm with wall tolerances less than or equal to +/−0.1 mm, (3) may be coated with materials, including zinc, such that the coating material weight is no less than 3 g/m2 and no greater than 30 g/m2, and (4) packaged in continuous coils, straight lengths, bent or formed.

Also excluded from the scope of the investigation is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370 (not including proprietary equivalents or other certifying body equivalents), with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7605.19.0000, 7604.10.5000, or 7616.99.5190.

Also excluded from the scope of the antidumping and countervailing duty investigations on aluminum extrusions from the People's Republic of China are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30,650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30,653 (May 26, 2011) (collectively, Aluminum Extrusions from the People's Republic of China). Solely for the investigations on aluminum extrusions from the People's Republic of China, the following is an exhaustive list of products that meet the definition of subject merchandise. Merchandise that is not included in the following list that meets the definition of subject merchandise in the 2011 antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China remains subject to the earlier orders. No other section of this scope language that provides examples of subject merchandise is exhaustive. The following products are included in the scope of these investigations on aluminum extrusions from the People's Republic of China, whether assembled or unassembled: heat sinks as described above; cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments; flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles; air duct registers; outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems; door threshold and sill assemblies; highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.

Imports of the subject merchandise are primarily provided for under the following categories of the HTSUS: 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080.

Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015;

8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.3000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8547.90.0020; 8547.90.0030; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9031.90.9195; 9401.99.9081; 9403.99.1040; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; 9547.90.0040; and 9603.90.8050.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Injury Test
IV. Analysis of China's Financial System
V. Diversification of China's Economy
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidies Valuation
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2024–05070 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–851]

Aluminum Extrusions From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from the Republic of Turkey (Turkey). The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: T.J. Worthington or Peter Zukowski, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4567 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on October 31, 2023.[1] On December 6, 2023, Commerce postponed the preliminary determination until March 4, 2024.[2]

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are aluminum extrusions from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] To date, numerous interested parties have commented on the scope of the investigation as it appeared in the *Initiation Notice.* (Separately, on February 20, 2024, the petitioners[6] proposed that Commerce modify the scope of the investigation.[7] For further discussion of this latter submission, *see* below.) All parties agree that a number of products are excluded from the scope of this investigation, and, after analyzing the comments from these parties, Commerce preliminarily finds that these products are not subject merchandise.[8] As a result, Commerce has preliminarily determined to modify the scope of this investigation to add two examples of excluded products (*i.e.,* solar panels and off-grid solar modules), as well as to exclude precision non-electrically conductive coated buss bars and precision drawn aluminum tubing. *See* the scope in Appendix I to this notice. For further discussion, *see* the Preliminary Scope Decision Memorandum.[9]

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[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023) (*Initiation Notice*).

[2] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 84788 (December 6, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Extrusions from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR 74434.

[6] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[7] *See* Petitioners' Letter, ''Revised Scope Language,'' dated February 20, 2024 (Petitioners' February 20, 2024 Submission).

[8] These products are: (1) fully assembled solar panels; (2) fully assembled off-grid solar charging modules; (3) aluminum and copper wires produced through a casting process; (4) stationary bicycles and rowing machines that enter unassembled as a packaged combination of parts to be assembled; (5) shower hooks and other articles made from cast aluminum, even where such cast aluminum is made from re-melted aluminum that had previously been extruded; and (6) precision non-electrically conductive coated buss bars and precision drawn aluminum tubing.

[9] *See* Memorandum, ''Antidumping Duty Investigations and Countervailing Duty Investigations of Aluminum Extrusions from People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

Additionally, Commerce preliminary determines that the scope language in paragraph eight of the scope as it appeared in the *Initiation Notice,* ''so long as they remain subject to the scope of such orders,'' has the potential to result in the future expansion of the scope of this order, if it is put in place. We have removed this language from the scope for the preliminary determination for this reason, and Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* accordingly. *See* the scope in Appendix I to this notice.

Finally, as noted above, in comments dated February 20, 2024, the petitioners proposed several substantive modifications to the scope of this investigation, as well as the scope in the companion antidumping duty (AD) and CVD investigations.[10] In particular, the petitioners proposed, for the first time, that Commerce:

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(2) add the following three-part test to determine whether products containing multiple subassemblies are excluded from the scope:

The scope also excludes merchandise containing multiple subassemblies of a larger whole with non-extruded aluminum components beyond fasteners. A covered subassembly, including any product expressly identified as subject merchandise in this scope, can only be excluded if it is fully and permanently assembled with at least one other different subassembly, and where (1) at least one of the subassemblies, if entered individually, would not itself be subject to the scope; (2) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the actual weight of the combined multiple subassemblies; and (3) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the number of pieces of the combined multiple subassemblies; and

(3) modify the definition of ''assembled merchandise'' to add the term ''fully and permanently assembled'; to add the word ''whole''; to add the phrase ''with the exception of consumable parts or material or interchangeable media or tooling''; to remove the phrase ''product or system''; and to remove the phrase ''regardless of whether the additional parts or materials are interchangeable.'' This paragraph now reads:

The scope excludes fully and permanently assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger whole and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material (with the exception of consumable parts or material or interchangeable media or tooling).

Given that these proposed modifications are complex and the petitioners requested them close in time to the CVD preliminary determination, Commerce has had insufficient time to evaluate them fully. We intend to request that the petitioner clarify certain aspects of the revised language after the issuance of this preliminary determination, and also to allow all interested parties the opportunity to comment on the proposed revisions and any clarifications provided by the petitioners.[11] We will address these comments and make a determination as to the appropriateness of adopting the proposed languages no later than May 1, 2024, the date of the preliminary determinations in the companion less-than-fair-value investigations.

We also intend to issue our preliminary decision regarding the remaining scope comments received from interested parties in response to the comment period set forth in the *Initiation Notice* no later than May 1, 2024, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decisions at that time.

We intend to incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[12]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each subsidy program found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[13] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent AD investigation of aluminum extrusions from Turkey based on a request made by the petitioners. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 15, 2024, unless postponed.[14]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated a *de minimis* rate for Sistem Aluminyum Sanayi ve Ticaret A.S. (Sistem). Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Erdoganlar Aluminyum San. ve Tic. A.S. (Erdoganlar). Consequently, the estimated weighted-average rate calculated for Erdoganlar is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Rate for Non-Responsive Companies

Five potential producers and/or exporters of aluminum extrusions from Turkey received but did not respond to Commerce's quantity and value (Q&V)

[10] *See* Petitioners' February 20, 2024 Submission. We are considering all the proposed revisions to the scope and have only highlighted a few examples of these proposed revisions.

[11] *See* Memorandum, ''Scope Comment Schedule,'' dated March 1, 2024 (citing Petitioners' February 20, 2024 Submission).

[12] The deadline for interested parties to submit scope case and rebuttal briefs will be established at a later time.

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[14] *See Aluminum Extrusions from the People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11814 (February 15, 2024).

questionnaire.[15] We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding.[16] Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these five companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, the five companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the five companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Erdoganlar Aluminyum San. ve Tic. A.S	1.45.
Sistem Aluminyum Sanayi ve Ticaret A.S	0.82 (*de minimis*).
Alkor Aluminyum Enerji Insaat Sanayi ve Ticaret Anonim Sirketi	147.53.
Ayde Aluminyum LTD. STI	147.53.
P.M.S. Aluminyum Sanayi ve Ticaret A.S	147.53.
Tuna Aluminium Ltd	147.53.
Uluson Aluminum	147.53.
All Others	1.45.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of the publication of this notice, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for Sistem is *de minimis,* Commerce is directing CBP not to suspend liquidation of entries of the merchandise from this company.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs related to the preliminary scope decisions made in this investigation. The deadlines to submit scope case and rebuttal briefs will be provided at a later time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing companion AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[17] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[18]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[19] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[20]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to

[15] *See* Memorandum, ''Quantity and Value Questionnaire Delivery Tracking,'' dated November 1, 2023.

[16] These companies are Alkor Aluminyum Enerji Insaat Sanayi ve Ticaret Anonim Sirketi; Ayde Aluminyum LTD. STI.; P.M.S. Aluminyum Sanayi ve Ticaret A.S.; Tuna Aluminium Ltd.; and Uluson Aluminum.

[17] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[18] *See* 19 351.309(c)(2) and (d)(2)

[19] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[20] *See APO and Service Final Rule.*

hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight.

The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.,* pressed through a die).

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation.

The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components.

Aluminum extrusions may be heat sinks, which are fabricated aluminum extrusions that dissipate heat away from a heat source and may serve other functions, such as structural functions. Heat sinks come in a variety of sizes and shapes, including but not limited to a flat electronic heat sink, which is a solid aluminum extrusion with at least one flat side used to mount electronic or mechanical devices; a heat sink that is a housing for electronic controls or motors; lighting heat sinks, which dissipate heat away from LED devices; and process and exchange heat sinks, which are tube extrusions with fins or plates used to hold radiator tubing. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. For purposes of the investigation on aluminum extrusions from the People's Republic of China, only heat sinks designed and produced around meeting specified thermal performance requirements and tested to comply with such requirements are included in the scope.

Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety.

The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. Parts or subassemblies described by this paragraph that are subject to duties in their entirety pursuant to existing antidumping and countervailing duty orders are excluded from the scope of this investigation. Any part or subassembly that otherwise meets the requirements of this scope and that is not covered by other antidumping and/or countervailing duty orders remains subject to the scope of the investigation.

The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable.

The scope also excludes merchandise containing non-extruded aluminum components beyond fasteners that is not apart or subassembly of a larger product or system that enters unassembled as a packaged combination of parts to be assembled as is for its intended use, without undergoing after importation any processing, fabrication, or finishing or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. To be excluded under this paragraph, the merchandise must be sold and enter as a discrete kit on one Customs entry form.

Examples of such excluded assembled and unassembled merchandise include windows

with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels and solar modules.

The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions.

The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight.

The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also excludes unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association (not including proprietary equivalents or other certifying body equivalents) where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm; (2) outer diameter of 11.0 mm or 12.7 mm; and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope are extruded drawn solid profiles made from an aluminum alloy with the Aluminum Association series designation commencing with the number 1, 3, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) solid cross sectional area greater than 62.4 mm2 and less than 906 mm2, (2) minimum electrical conductivity of 58% of the international annealed copper standard (IACS) or maximum resistivity of 2.97 μΩ/cm, (3) a uniformly applied non-electrically conductive temperature-resistant coating co-extruded over characteristic (1) of either polyamide, cross-linked polyethylene, or silicone rubber material which meets the following standards: (a) Vicat A temperature threshold of >140 degrees Celsius, (b) flammability requirements of UL 94V–0, and (c) a minimum coating thickness of 0.10 mm and maximum coating thickness of 2.0 mm, with a maximum thickness tolerance of ±0.20 mm, (4) characteristic 3 may or may not be encapsulated with a ''Precision Drawn Tubing,'' wall thicknesses less than 1.2mm, which is mechanically fixed in place, and (5) packaged in straight lengths, bent or formed and/or attached to hardware.

Also excluded from the scope are extruded tubing and drawn over a ID plug and through a OD die made from an aluminum alloy with the Aluminum Association series designation commencing with the number 3, 5, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) an outside mean diameter no greater than 30 mm with a tolerance less than or equal to ± 0.10 mm, (2) uniform wall thickness no greater than 2.7 mm with wall tolerances less than or equal to ± 0.1 mm, (3) may be coated with materials, including zinc, such that the coating material weight is no less than 3 g/m2 and no greater than 30 g/m2, and (4) packaged in continuous coils, straight lengths, bent or formed.

Also excluded from the scope of the investigation is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370 (not including proprietary equivalents or other certifying body equivalents), with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7605.19.0000, 7604.10.5000, or 7616.99.5190.

Also excluded from the scope of the antidumping and countervailing duty investigations on aluminum extrusions from the People's Republic of China are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30,650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30,653 (May 26, 2011) (collectively, Aluminum Extrusions from the People's Republic of China). Solely for the investigations on aluminum extrusions from the People's Republic of China, the following is an exhaustive list of products that meet the definition of subject merchandise. Merchandise that is not included in the following list that meets the definition of subject merchandise in the 2011 antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China remains subject to the earlier orders. No other section of this scope language that provides examples of subject merchandise is exhaustive. The following products are included in the scope of these investigations on aluminum extrusions from the People's Republic of China, whether assembled or unassembled: heat sinks as described above; cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments; flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles; air duct registers; outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems; door threshold and sill assemblies; highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.

Imports of the subject merchandise are primarily provided for under the following categories of the HTSUS: 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090;

7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080.

Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.3000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8547.90.0020; 8547.90.0030; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9031.90.9195; 9401.99.9081; 9403.99.1040; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; 9547.90.0040; and 9603.90.8050.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–05067 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–822]

Utility Scale Wind Towers From Malaysia: Final Results of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that CS Wind Malaysia Sdn Bhd (CS Wind), a producer/exporter of utility scale wind towers (wind towers) from Malaysia, received countervailable subsidies during the period of review (POR) March 25, 2021, through December 31, 2021.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2023, Commerce published the *Preliminary Results* of this administrative review and invited parties to comment.[1] On December 15, 2023, Commerce extended the deadline for the final results until March 5, 2024.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by this order are wind towers from Malaysia. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all issues raised in interested parties' case/rebuttal briefs in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties is provided as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

After evaluating the comments received from interested parties, we have made certain changes to CS Wind's subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

We determine that, for the period March 25, 2021, through December 31, 2021, the following net countervailable subsidy rate exists:

Producer/exporter	Subsidy rate (percent *ad valorem*)
CS Wind Malaysia Sdn Bhd	10.72

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C), Commerce will determine, and U.S.

[1] *See Utility Scale Wind Towers from Malaysia: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 2019,* 88 FR 61516 (September 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated December 15, 2023.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Utility Scale Wind Towers from Malaysia; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed company at the applicable *ad valorem* assessment rate. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown for the company listed above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the retuSW nen/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.

Notice to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–05114 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–841]

Aluminum Extrusions From Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from Indonesia. The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on October 31, 2023.[1] On December 6, 2023, Commerce postponed the preliminary determination until March 4, 2024.[2]

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are aluminum extrusions from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] To date, numerous interested parties have commented on the scope of the investigation as it appeared in the *Initiation Notice.* (Separately, on February 20, 2024, the petitioners[6]

[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023). (*Initiation Notice*).

[2] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 84788 (December 6, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Extrusions from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR 74434.

[6] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

proposed that Commerce modify the scope of the investigation.[7] For further discussion of this latter submission, *see* below.) All parties agree that a number of products are excluded from the scope of this investigation, and, after analyzing the comments from these parties, Commerce preliminarily finds that these products are not subject merchandise.[8] As a result, Commerce has preliminarily determined to modify the scope of this investigation to add two examples of excluded products (*i.e.,* solar panels and off-grid solar modules), as well as to exclude precision non-electrically conductive coated buss bars and precision drawn aluminum tubing. *See* the scope in Appendix I to this notice. For further discussion, *see* the Preliminary Scope Decision Memorandum.[9]

Additionally, Commerce preliminary determines that the scope language in paragraph eight of the scope as it appeared in the *Initiation Notice,* ''so long as they remain subject to the scope of such orders,'' has the potential to result in the future expansion of the scope of this order, if it is put in place. We have removed this language from the scope for the preliminary determination for this reason, and Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* accordingly. *See* the scope in Appendix I to this notice.

Finally, as noted above, in comments dated February 20, 2024, the petitioners proposed several substantive modifications to the scope of this investigation, as well as the scope in the companion antidumping duty (AD) and CVD investigations.[10] In particular, the petitioners proposed, for the first time, that Commerce:

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(2) add the following three-part test to determine whether products containing multiple subassemblies are excluded from the scope:

The scope also excludes merchandise containing multiple subassemblies of a larger whole with non-extruded aluminum components beyond fasteners. A covered subassembly, including any product expressly identified as subject merchandise in this scope, can only be excluded if it is fully and permanently assembled with at least one other different subassembly, and where (1) at least one of the subassemblies, if entered individually, would not itself be subject to the scope; (2) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the actual weight of the combined multiple subassemblies; and (3) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the number of pieces of the combined multiple subassemblies; and

(3) modify the definition of ''assembled merchandise'' to add the term ''fully and permanently assembled'; to add the word ''whole''; to add the phrase ''with the exception of consumable parts or material or interchangeable media or tooling''; to remove the phrase ''product or system''; and to remove the phrase ''regardless of whether the additional parts or materials are interchangeable.'' This paragraph now reads:

The scope excludes fully and permanently assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger whole and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material (with the exception of consumable parts or material or interchangeable media or tooling).

Given that these proposed modifications are complex and the petitioners requested them close in time to the CVD preliminary determination, Commerce has had insufficient time to evaluate them fully. We intend to request that the petitioners clarify certain aspects of the revised language after the issuance of this preliminary determination, and also to allow all interested parties the opportunity to comment on the proposed revisions and any clarifications provided by the petitioners.[11] We will address these comments and make a determination as to the appropriateness of adopting the proposed languages no later than May 1, 2024, the date of the preliminary determinations in the companion less-than-fair-value investigations.

We also intend to issue our preliminary decision regarding the remaining scope comments received from interested parties in response to the comment period set forth in the *Initiation Notice* no later than May 1, 2024, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decisions at that time.

We intend to incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[12]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[13] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that Alutech did not act to the best of its ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[14] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent AD investigation of aluminum extrusions from Indonesia, based on a request made by the petitioners.[15] Consequently, the final

[7] *See* Petitioners' Letter, ''Revised Scope Language,'' dated February 20, 2024 (Petitioners' February 20, 2024 Submission).

[8] These products are: (1) fully assembled solar panels; (2) fully assembled off-grid solar charging modules; (3) aluminum and copper wires produced through a casting process; (4) stationary bicycles and rowing machines that enter unassembled as a packaged combination of parts to be assembled; (5) shower hooks and other articles made from cast aluminum, even where such cast aluminum is made from re-melted aluminum that had previously been extruded; and (6) precision non-electrically conductive coated buss bars and precision drawn aluminum tubing.

[9] *See* Memorandum, ''Antidumping Duty Investigations and Countervailing Duty Investigations of Aluminum Extrusions from People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[10] *See* Petitioners' February 20, 2024 Submission. We are considering all the proposed revisions to the scope and have only highlighted a few examples of these proposed revisions.

[11] *See* Memorandum,'' Scope Comment Schedule,'' dated March 1, 2024 (citing Petitioners' February 20, 2024 Submission).

[12] The deadline for interested parties to submit scope case and rebuttal briefs will be established at a later time.

[13] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[14] *See* sections 776(a) and (b) of the Act.

[15] *See* Petitioners' Letter, ''Request to Align Countervailing Duty Investigation Final

CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 15, 2024, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated a total net subsidy rate for PT Indal Aluminium Industry Tbk. (Indal) that is *de minimis* and a net subsidy rate for PT Alfo Citra Abadi (PT Alfo) that is not zero, *de minimis,* or based entirely on the facts otherwise available. Because Commerce calculated an individual estimated countervailable subsidy rate for PT Alfo that is not zero, *de minimis,* or based entirely on the facts otherwise available, we have preliminarily assigned an all-others rate based on the estimated subsidy rate calculated for PT Alfo.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
PT Indal Aluminium Industry Tbk [16].	0.52 (*de minimis*).
PT Alfo Citra Abadi ...	6.69.
Alutech	43.56.
All Others	6.69.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of the publication of this notice, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for Indal is *de minimis*, Commerce is directing CBP not to suspend liquidation of entries of the merchandise produced and exported by Indal.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs related to the preliminary scope decisions made in this investigation. The deadlines to submit scope case and rebuttal briefs will be provided at a later time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing companion AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[17] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[18]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[19] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[20]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[21] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from Indonesia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Determination with Antidumping Duty Investigation Final Determination,'' dated February 13, 2024.

[16] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determines PT Indal Aluminium Industry Tbk. is cross-owned with PT Indal Reiwa Auto.

[17] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[18] *See* 19 351.309(c)(2) and (d)(2).

[19] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[20] *See APO and Service Final Rule.*

[21] *See* 19 CFR 351.310(d).

Dated: March 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight.

The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.,* pressed through a die).

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation.

The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components.

Aluminum extrusions may be heat sinks, which are fabricated aluminum extrusions that dissipate heat away from a heat source and may serve other functions, such as structural functions. Heat sinks come in a variety of sizes and shapes, including but not limited to a flat electronic heat sink, which is a solid aluminum extrusion with at least one flat side used to mount electronic or mechanical devices; a heat sink that is a housing for electronic controls or motors; lighting heat sinks, which dissipate heat away from LED devices; and process and exchange heat sinks, which are tube extrusions with fins or plates used to hold radiator tubing. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. For purposes of the investigation on aluminum extrusions from the People's Republic of China, only heat sinks designed and produced around meeting specified thermal performance requirements and tested to comply with such requirements are included in the scope.

Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety.

The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. Parts or subassemblies described by this paragraph that are subject to duties in their entirety pursuant to existing antidumping and countervailing duty orders are excluded from the scope of this investigation. Any part or subassembly that otherwise meets the requirements of this scope and that is not covered by other antidumping and/or countervailing duty orders remains subject to the scope of the investigation.

The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable.

The scope also excludes merchandise containing non-extruded aluminum components beyond fasteners that is not apart or subassembly of a larger product or system that enters unassembled as a packaged combination of parts to be assembled as is for its intended use, without undergoing after importation any processing, fabrication, or finishing or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. To be excluded under this paragraph, the merchandise must be sold and enter as a discrete kit on one Customs entry form.

Examples of such excluded assembled and unassembled merchandise include windows with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels and solar modules.

The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions.

The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5

(or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight.

The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also excludes unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association (not including proprietary equivalents or other certifying body equivalents) where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm; (2) outer diameter of 11.0 mm or 12.7 mm; and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope are extruded drawn solid profiles made from an aluminum alloy with the Aluminum Association series designation commencing with the number 1, 3, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) solid cross sectional area greater than 62.4 mm2 and less than 906 mm2, (2) minimum electrical conductivity of 58% of the international annealed copper standard (IACS) or maximum resistivity of 2.97 μΩ/cm, (3) a uniformly applied non-electrically conductive temperature-resistant coating co-extruded over characteristic (1) of either polyamide, cross-linked polyethylene, or silicone rubber material which meets the following standards: (a) Vicat A temperature threshold of >140 degrees Celsius, (b) flammability requirements of UL 94V–0, and (c) a minimum coating thickness of 0.10 mm and maximum coating thickness of 2.0 mm, with a maximum thickness tolerance of +/− 0.20 mm, (4) characteristic 3 may or may not be encapsulated with a ''Precision Drawn Tubing,'' wall thicknesses less than 1.2mm, which is mechanically fixed in place, and (5) packaged in straight lengths, bent or formed and/or attached to hardware.

Also excluded from the scope are extruded tubing and drawn over a ID plug and through a OD die made from an aluminum alloy with the Aluminum Association series designation commencing with the number 3, 5, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) an outside mean diameter no greater than 30 mm with a tolerance less than or equal to +/− 0.10 mm, (2) uniform wall thickness no greater than 2.7 mm with wall tolerances less than or equal to +/− 0.1 mm, (3) may be coated with materials, including zinc, such that the coating material weight is no less than 3 g/m2 and no greater than 30 g/m2, and (4) packaged in continuous coils, straight lengths, bent or formed.

Also excluded from the scope of the investigation is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370 (not including proprietary equivalents or other certifying body equivalents), with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7605.19.0000, 7604.10.5000, or 7616.99.5190.

Also excluded from the scope of the antidumping and countervailing duty investigations on aluminum extrusions from the People's Republic of China are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30,650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30,653 (May 26, 2011) (collectively, Aluminum Extrusions from the People's Republic of China). Solely for the investigations on aluminum extrusions from the People's Republic of China, the following is an exhaustive list of products that meet the definition of subject merchandise. Merchandise that is not included in the following list that meets the definition of subject merchandise in the 2011 antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China remains subject to the earlier orders. No other section of this scope language that provides examples of subject merchandise is exhaustive. The following products are included in the scope of these investigations on aluminum extrusions from the People's Republic of China, whether assembled or unassembled: heat sinks as described above; cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments; flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles; air duct registers; outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems; door threshold and sill assemblies; highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.

Imports of the subject merchandise are primarily provided for under the following categories of the HTSUS: 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080.

Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.3000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080;

8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8547.90.0020; 8547.90.0030; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9031.90.9195; 9401.99.9081; 9403.99.1040; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; 9547.90.0040; and 9603.90.8050.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–877]

Stainless Steel Flanges From India: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that producers/exporters of stainless steel flanges (flanges) from India did not make sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) October 1, 2021, through September 30, 2022.

DATES: Applicable March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros or Seth Brown, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–0029, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce selected two companies, Chandan Steel Limited (Chandan) and Kisaan Die Tech Private Limited (KDT) as the mandatory respondents, in this review. On November 6, 2023, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] In December 2023, we received case briefs from Core Pipe Products, Inc. (the petitioner) and rebuttal briefs from Chandan and KDT.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is flanges from India. For a complete description of the scope of the order, *see* the *Preliminary Results* PDM.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice in Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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 Since the Preliminary Results

We made no changes to the *Preliminary Results* based on comments from interested parties.

Final Results of Review

The final estimated weighted-average dumping margins are listed below for the period October 1, 2021, through September 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Chandan Steel Limited	0.00
Kisaan Die Tech Private Limited	0.00
Companies Not Selected for Individual Examination[4]	0.00

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with the final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the *Preliminary Results,* there are no new calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Where a respondent's weighted-average dumping margin is either zero or *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Accordingly, because Chandan's and KDT's weighted-average dumping margins are zero percent, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Chandan or KDT for which these companies did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the

[1] *See Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2021–2022,* 88 FR 76176 (November 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Petitioner's Letters, ''Petitioner's Case Brief for Chandan,'' dated December 6, 2023; and ''Petitioner's Case Brief for KDT,'' dated December 6, 2023; *see also* Chandan's Letter, ''Submission of rebuttal brief in response to petitioner's case brief,'' dated December 18, 2023; and KDT's Letter, ''Rebuttal to Petitioners Pre-Preliminary Comments,'' dated December 18, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Flanges from India; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* appendix II for the list of exporters and/or producers not selected for individual examination.

intermediate company(ies) involved in the transaction.[5]

For the companies which were not selected for individual examination, we will also instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is *de minimis* (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered by this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were examined; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 7.00 percent, the all-others rate established in the *Amended Final Determination*.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), 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 violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

List of Companies Not Selected for Individual Examination

1. Balkrishna Steel Forge Pvt. Ltd.
2. BFN Forgings Private Limited; Bebitz Flanges Works Private Limited; Fanschen werk Bebitz GmbH; Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; Viraj Impoexpo, Ltd.; and Viraj Profiles Limited[7]
3. Echjay Forgings Private Limited
4. Fivebros Forgings Pvt. Ltd.[8]
5. Goodluck India Limited
6. Hilton Metal Forging Limited
7. Jai Auto Pvt. Ltd.
8. Jay Jagdamba Forgings Pvt Ltd.
9. Jay Jagdamba Ltd.
10. Jay Jagdamba Profile Pvt Ltd.
11. Pradeep Metals Limited
12. Shree Jay Jagdamba Flanges Pvt. Ltd.

[FR Doc. 2024–05065 Filed 3–8–24; 8:45 am]

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[5] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Stainless Steel Flanges from India: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination,* 86 FR 50325 (September 8, 2021) (*Amended Final Determination*).

[7] Commerce has previously found BFN Forgings Private Limited to be part of a collapsed entity. *See, e.g., Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination,* 83 FR 40745 (August 16, 2018). The companies which are part of this collapsed entity are listed above.

[8] We incorrectly listed this company as ''Fivebros Pvt Ltd.'' in the *Initiation Notice* and as ''Fivebros Forging Pvt Ltd.'' in the *Preliminary Results. See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 74404 (December 5, 2022); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023) (collectively, *Initiation Notice*); and *Preliminary Results,* 88 FR at 76178.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Countervailing Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 29, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *Risen Energy Co.* v. *United States,* Consol. Court no. 22–00231, sustaining the U.S. Department of Commerce's (Commerce) first remand results pertaining to the administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (China) covering the period January 1, 2019 through, December 31, 2019. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rates assigned to JA Solar Technology Yangzhou Co., Ltd. (JA

Solar) and Risen Energy Co., Ltd. (Risen).

DATES: Applicable March 10, 2024.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, Commerce published its final results in the 2019 CVD administrative review of solar cells from China,[1] in which Commerce: (1) found that JA Solar and Risen used the Export Buyer's Credit program (EBCP); [2] (2) determined that the Tax Exemptions Under the Article 26(2) of the Enterprise Income Tax Law Program (Article 26(2) Tax Program) is *de jure* specific; [3] (3) relied on an average of Thai and Malaysian data as a tier three benchmark for the provision of land for less than adequate remuneration (LTAR); [4] and (4) relied on an average of Xeneta and Descartes datasets as a tier two benchmark for ocean freight for several LTAR subsidy calculations.[5]

On August 15 and September 12, 2022, Commerce published the *Amended Final Results* [6] and *Corrections,*[7] respectively, correcting certain ministerial errors and inadvertent errors in the *Final Results*.

Risen and JA Solar appealed Commerce's *Final Results/Amended Final Results.* On October 11, 2023, the CIT remanded the *Final Results/ Amended Final Results* to Commerce.[8] The CIT ordered Commerce to: (1) consider Risen's untimely non-use certification, and to attempt to verify the Risen's and JA Solar's non-use certifications to the extent that verification does not overly burden voluntary participants; [9] (2) remove the Article 26(2) Tax Program from its subsidy rate for Risen; [10] (3) reconsider Commerce's land for LTAR calculation consistent with the CIT's holdings in *Risen II,* in which the CIT found that the use of the Thai data is insufficiently explained to meet the substantial evidence standard; [11] and (4) reconsider whether it remains appropriate to use Descartes data for purposes of this review.[12]

On remand, Commerce requested that Risen submit on the record the non-use certification which was found to be untimely in the underlying review.[13] Risen complied with Commerce's request.[14] On December 12, 2023, Commerce issued its Draft Remand Results; [15] only JA Solar submitted comments.[16]

In its remand redetermination, issued in January 2024,[17] for both companies, Commerce: (1) removed the EBCP from its overall subsidy rate calculations; (2) removed Article 26(2) Tax program from its overall subsidy rate calculations; (3) used the Malaysian data as the tier three benchmark for the provision of land for LTAR given it is more contemporaneous to the acquisition years of the land-use rights; and in so doing, did not disturb the benefit streams calculated in the 2017 administrative review and carried forward to this review (*i.e.,* 2019 administrative review); and (4) excluded Descartes data and relied solely on Xeneta data as a tier two benchmark for ocean freight. Consequently, Commerce has revised the subsidy benefit calculations for Risen and JA Solar. The CIT sustained Commerce's final redetermination.[18]

Timken Notice

In its decision in *Timken,*[19] as clarified by *Diamond Sawblades,*[20] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 29, 2024 judgment constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results* and *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results* and *Amended Final Results* with respect to Risen and JA Solar as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Risen Energy Co., Ltd.[21]	7.22
JA Solar Technology Yangzhou Co., Ltd.[22]	10.04

Cash Deposit Requirements

Because Risen and JA Solar have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, Commerce will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019,* 87 FR 40491 (July 7, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *Id.* at Comment 1.

[3] *Id.* at Comment 20.

[4] *Id.* at Comment 17.

[5] *Id.* at Comment 7.

[6] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Notice of Amended Final Results Countervailing Duty Administrative Review; 2019,* 87 FR 50069 (August 15, 2022) (*Amended Final Results*).

[7] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2019 and Notice of Amended Final Results of Countervailing Duty Review, 2019; Corrections,* 87 FR 55782 (September 12, 2022) (*Corrections*).

[8] *See Remand Order,* 658 F. Supp. 3d at 1371–79.

[9] *Id.,* 658 F. Supp. 3d at 1372.

[10] *See Remand Order,* 658 F. Supp. 3d at 1373.

[11] *Id.* at 1375 (citing *Risen Energy Co.* v. *United States,* Consol. Court No. 20–03912, Slip Op. 23–48 (CIT April 11, 2023) (*Risen II*)).

[12] *See Remand Order,* 658 F. Supp. 3d at 1378.

[13] *See* Commerce's Letter, ''Supplemental Questionnaire,'' dated November 27, 2023.

[14] *See* Risen's Letter, ''Supplemental Questionnaire Response,'' dated November 29, 2023.

[15] *See* Draft Results of Remand Redetermination Pursuant to Court Remand, *Risen Energy Co., Ltd., et al.* v. *United States,* Consol. Court No. 22–00231, Slip Op. 23–148 (CIT October 11, 2023), dated December 12, 2023 (Draft Remand Results).

[16] *See* JA Solar's Letter, ''Comments on Draft Remand Redetermination,'' dated December 21, 2023 (JA Solar Comments).

[17] *See Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd., et al.* v. *United States,* Consolidated Court No. 22–00231, Slip Op. 23–148 (CIT October 11, 2023), dated January 9, 2024 (*Final Remand*), available at *https://access.trade.gov/resources/remands/23-148.pdf.*

[18] *See Risen Energy Co., Ltd., et al.* v. *United States,* Slip Op. 24–25 (CIT 2024).

[19] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[20] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[21] Risen is cross-owned with the following 12 companies: (1) Risen (Luoyang) New Energy Co., Ltd.; (2) Risen (Wuhai) New Energy Co., Ltd.; (3) Risen Energy (Changzhou) Co., Ltd.; (4) Risen Energy (Yiwu) Co., Ltd.; (5) Zhejiang Boxin Investment Co., Ltd.; (6) Zhejiang Twinsel Electronic Technology Co., Ltd. (7) JiuJiang Shengchao Xinye Technology Co., Ltd. (including JiuJang Shengshao Xinye Technology Co., Ltd. Ruichang Branch); (8) Jiangsu Sveck New Material Co., Ltd.; (9) Changzhou Sveck Photovoltaic New Material Co., Ltd.; (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); (10) Changzhou Sveck New Material Technology Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); (11) Ninghai Risen Energy Power Development Co., Ltd.; and (12) Risen (Ningbo) Electric Power Development Co., Ltd. *See Final Results* IDM at 10–11.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that were produced and/or exported by Risen and JA Solar, and were entered, or withdrawn from warehouse, for consumption during the period January 1, 2019, through December 31, 2019. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Risen and JA Solar in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis*. Where an *ad valorem* subsidy rate is zero or *de minimis,*[23] we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

[22] JA Solar is cross-owned with the following 34 companies: (1) Shanghai JA Solar Technology Co., Ltd.; (2) JA (Hefei) Renewable Energy Co., Ltd.; (3) Hefei JA Solar Technology Co., Ltd.; (4) JA Solar Investment China Co., Ltd.; (5) Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; (6) Donghai JingAo Solar Energy Science and Technology Co., Ltd. (JA Donghai); (7) Solar Silicon Valley Electronic Science and Technology Co., Ltd.; (8) Beijing Jinfeng Investment Co., Ltd.; (9) JingAo Solar Co., Ltd.; (10) Ningjin Songgong Electronic Materials Co., Ltd.; (11) Jinglong Industry and Commerce Group Co., Ltd.; (12) Ningjin County Jingyuan New Energy Investment Co., Ltd.; (13) Hebei Jinglong New Materials Technology Group Co., Ltd.; (14) Hebei Jinglong Sun Equipment Co. Ltd.; (15) Hebei Jingle Optoelectronic Technology Co., Ltd.; (16) Ningjin Jingxing Electronic Material Co., Ltd.; (17) Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; (18) Hebei Ningtong Electronic Materials Co., Ltd.; (19) JA Solar (Xingtai) Co., Ltd.; (20) Xingtai Jinglong Electronic Material Co., Ltd.; (21) Xingtai Jinglong PV Materials Co., Ltd.; (22) JA PV Technology Co., Ltd.; (23) Ningjin Jinglong PV Industry Investment Co., Ltd.; (24) Baotou JA Solar Technology Co., Ltd.; (25) Xingtai Jinglong New Energy Co., Ltd.; (26) Ningjin County Jing Tai Fu Technology Co., Ltd.; (27) JA Solar Technology Co., Ltd.; (28) Jinglong Technology Holdings Co., Ltd.; (29) Ningjin Guiguang Electronics Investment Co., Ltd.; (30) Ningjin Longxin Investment Co., Ltd.; (31) Beijing JA Solar PV Technology Co., Ltd.; (32) Solar Silicon Peak Electronic Science and Technology Co., Ltd.; (33) Jingwei Electronic Materials Co., Ltd.; and (34) Taicang Juren PV Material Co., Ltd. *See Final Results* IDM at 9–10.

[23] *See* 19 CFR 351.106(c)(2).

Dated: March 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–05066 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–852, A–533–924, A–588–882, A–518–001, A–421–817, A–274–810]

Melamine From Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable March 5, 2024.

FOR FURTHER INFORMATION CONTACT: Kate Johnson (Germany) at (202) 482–4929; Charles DeFilippo (India) at (202) 482–3797; Carolyn Adie (Japan) at (202) 482–6250; Fred Baker (the Netherlands) at (202) 482–2924; Gorden Struck (Qatar) at (202) 482–8151; and Brittany Bauer (Trinidad and Tobago) at (202) 482–3860, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On February 14, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago filed in proper form on behalf of Cornerstone Chemical Company (the petitioner).[1] These AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of melamine from Germany, India, Qatar, and Trinidad and Tobago.[2]

Between February 16 and 28, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[3] The petitioner filed responses to the supplemental questionnaires between February 22 and 29, 2024.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the melamine industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[5]

Periods of Investigation

Because the Petitions were filed on February 14, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for each of these LTFV investigations is January 1, 2023, through December 31, 2023.

Scope of the Investigations

The product covered by these investigations is melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On February 16, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated February 14, 2024 (the Petitions).

[2] *Id.*

[3] *See* Commerce's Letter, ''Supplemental Questions,'' dated February 16, 2024 (General Issues Questionnaire); *see also* Country-Specific AD Supplemental Questionnaires: Germany Supplemental, India Supplemental, Japan Supplemental, the Netherlands Supplemental, Qatar Supplemental, and Trinidad and Tobago Supplemental, dated February 16, 2024; and Memoranda, ''Phone Call,'' dated February 23, 2024, and February 28, 2024, respectively.

[4] *See* Petitioner's Letters, ''Petitioner's Response to Volume I General Issues Supplemental Questionnaire,'' dated February 22, 2024 (General Issues Supplement); *see also* Country-Specific AD Supplemental Responses, dated February 22, 2024; Country-Specific Second AD Supplemental Responses, dated February 27, 2024; and Trinidad and Tobago Third AD Supplemental Response, dated February 29, 2024.

[5] *See* section on ''Determination of Industry Support for the Petitions,'' *infra.*

domestic industry is seeking relief.[6] On February 22, 2024, the petitioner provided clarifications and revised the scope.[7] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these revisions.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on March 25, 2024, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 4, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of melamine to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe melamine, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on March 25, 2024, which is 20 calendar days from the signature date of this notice.[12] Any rebuttal comments must be filed by 5:00 p.m. ET on April 4, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic-like product analysis begins is

[6] *See* General Issues Questionnaire.

[7] *See* General Issues Supplement at 5–8.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b)(1).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* 19 CFR 351.303(b)(1).

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[15] Based on our analysis of the information submitted on the record, we have determined that melamine, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2023.[17] The petitioner stated that there are no other known producers of melamine in the United States and provided information to support its claim; therefore, the Petitions are supported by 100 percent of the U.S. industry.[18] We relied on the data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[24]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner states that subject imports from Germany, India, the Netherlands, Qatar, and Trinidad and Tobago exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

With regard to Japan, while the allegedly dumped imports do not exceed the statutory requirements for negligibility,[26] the petitioner alleges and provides supporting evidence that: (1) there is a reasonable indication that data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold [27] and (2) there is the potential that imports from Japan will imminently exceed the negligibility threshold and therefore, are not negligible for purposes of a threat determination.[28] The petitioner's arguments regarding the reasonable indication that information obtained in the ITC's investigation will demonstrate that imports from Japan exceed the negligibility threshold are consistent with the SAA. Furthermore, the petitioner's arguments regarding the potential for imports from Japan to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

The petitioner contends that the industry's injured condition is illustrated by the significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; decline in shipments, production, and capacity utilization; and adverse effect on financial performance.[29] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[30] In accordance with section 771(7)(G)(ii)(III) of the Act, which provides an exception to the mandatory cumulation provision for imports from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), we considered the petitioner's allegation of injury with respect to Trinidad and Tobago, a designated beneficiary under CBERA, independently of the allegations for Germany, India, Japan, the Netherlands, and Qatar, and found that the information provided satisfies the requirements for initiation.[31]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the

[15] *See* Petitions at Volume I (pages 14–17 and Exhibits I–3 through I–5, I–21 and I–22).

[16] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklists: Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago, dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago (Attachment II). These checklists are on file electronically via ACCESS.

[17] *See* Petitions at Volume I (page 5 and Exhibit I–1).

[18] *Id.* at 5 and Exhibits I–3 and I–8.

[19] *Id.* For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[20] *See* Petitions at Volume I (page 5 and Exhibits I–3 and I–8). For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[21] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[22] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[23] *Id.*

[24] *Id.*

[25] *See* Petitions at Volume I (pages 17–18 and Exhibit I–23).

[26] *Id.*

[27] *Id.* at 18 and Exhibit I–25; *see also* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) (SAA), at 857.

[28] *See* Petitions at Volume I (page 18 and Exhibit I–25); *see also* section 771(24)(A)(iv) of the Act.

[29] *See* Petitions at Volume I (pages 1–3, 17–40, and Exhibits I–1, I–3 through I–5, I–8, I–13, and I–23 through I–31).

[30] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago.

[31] *Id.*

Country-Specific AD Initiation Checklists.

U.S. Price

For Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago, the petitioner based export price (EP) on the average unit values (AUVs) derived from official import statistics for imports of melamine from these countries into the United States during the POI.[32] For Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago, the petitioner also based EP on transaction-specific AUVs (*i.e.,* month- and port-specific AUVs) derived from official import statistics and tied to ship manifest data.[33] For India and Qatar, the petitioner also based EP on pricing information for sales, or offers for sale, of melamine produced in and exported from each country.[34] For each country, the petitioner made certain adjustments to U.S. price to calculate net ex-factory U.S. prices, where applicable.[35]

Normal Value [36]

For Germany, India, and Qatar, the petitioner based NV on home market prices obtained through market research for melamine produced in and sold, or offered for sale, in the respective countries during the POI.[37] For India and Qatar, the petitioner provided information indicating that the prices for melamine sold or offered for sale in the respective countries were below the COP.[38] Therefore, for India and Qatar, the petitioner calculated NV based on constructed value (CV).[39]

For Japan, the petitioner stated that it was unable to obtain home market prices for melamine produced and sold in Japan and based NV on the POI AUV of publicly-available export data for exports of melamine from Japan to a third country, Italy.[40] The petitioner provided information indicating that third country prices were below the COP and therefore based NV on CV.[41]

For the Netherlands, the petitioner stated that it was unable to obtain home market or third country pricing information for melamine to use as a basis for NV.[42] Therefore, for the Netherlands, the petitioner calculated NV based on CV.[43]

For Trinidad and Tobago, the petitioner contends that the home market is not viable based on available information and based NV on the POI AUV of publicly-available export data for exports of melamine from Trinidad and Tobago to a third country, Germany.[44] The petitioner provided information indicating that third country prices were below the COP and therefore based NV on CV.[45]

For further discussion of CV for India, Japan, the Netherlands, Qatar, and Trinidad and Tobago, *see* the section ''Normal Value Based on Constructed Value,'' below.

Normal Value Based on Constructed Value

As noted above, for India, Japan, Qatar, and Trinidad and Tobago, the petitioner provided information indicating that the prices for melamine sold or offered for sale in the respective home market or in third country markets were below the COP.[46] Also, as noted above for the Netherlands, the petitioner stated that it was unable to obtain home market or third country prices for melamine to use as a basis for NV.[47] Therefore, for India, Japan, the Netherlands, Qatar, and Trinidad and Tobago, the petitioner calculated NV based on CV.[48]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general and administrative (SG&A), financial expenses, and profit.[49] For each of these countries, in calculating the cost of manufacturing, the petitioner relied on its own production experience and input consumption rates, valued using publicly available information applicable to the respective countries or, for certain inputs, using its own costs.[50] In calculating SG&A, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2022 financial statements of a producer of identical or comparable merchandise domiciled in the respective countries, where applicable.[51]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for melamine for each of the countries covered by this initiation are as follows: (1) Germany—139.74 to 218.73 percent; (2) India—393.82 to 632.74 percent; (3) Japan—102.53 to 127.69 percent; (4) the Netherlands—34.84 to 72.16 percent; (5) Qatar—143.75 to 504.23 percent; and (6) Trinidad and Tobago—49.78 to 146.85 percent.[52]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

In the Petitions, the petitioner identified one company in Germany as a producer/exporter of melamine (*i.e.,* LAT Nitrogen Piesteritz GmbH), one company in India as a producer/exporter of melamine (*i.e.,* Guajarat State Fertilizer and Chemicals Limited), one company in Japan as a producer/exporter of melamine (*i.e.,* Mitsui Chemicals, Inc.), one company in the Netherlands as a producer/exporter of melamine (*i.e.,* OCI Nitrogen B.V.), two companies in Qatar as producers/exporters of melamine (*i.e.,* Qatar Melamine Company and Muntajat Qatar Chemical and Petrochemical Marketing and Distribution Company), and one company in Trinidad and Tobago as a producer/exporter of melamine (*i.e.,* Methanol Holdings (Trinidad) Limited) and provided independent third-party

[32] *See* Country-Specific AD Initiation Checklists.

[33] *Id.*

[34] *See* India AD Initiation Checklist and Qatar AD Initiation Checklist.

[35] *See* Country-Specific AD Initiation Checklists.

[36] In accordance with section 773(b)(2) of the Act, for each of these LTFV investigations, Commerce will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[37] *See* Germany AD Initiation Checklist, India AD Initiation Checklist, and Qatar AD Initiation Checklist.

[38] *See* India AD Initiation Checklist and Qatar AD Initiation Checklist.

[39] *See* India AD Initiation Checklist and Qatar AD Initiation Checklist.

[40] *See* Japan AD Initiation Checklist.

[41] *Id.*

[42] *See* The Netherlands AD Initiation Checklist.

[43] *Id.*

[44] *See* Trinidad and Tobago AD Initiation Checklist.

[45] *Id.*

[46] *See* Country-Specific AD Initiation Checklists.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

information as support.[53] We currently know of no additional producers/exporters of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago.

Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.,* the companies cited above). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters in Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago, if no comments are received or if comments received further support the existence of these sole producers/exporters in the respective countries, we do not intend to conduct respondent selection and will proceed to issuing the initial AD questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and/or Trinidad and Tobago are materially injuring, or threatening material injury to, a U.S. industry.[54] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[55] Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [56] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[57] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating 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 a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[58] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[59]

[53] *See* Petitions at Volume I (pages 13–14 and Exhibits I–8 and I–18); *see also* General Issues Supplement at 1–4 and Exhibits I–S1 and I–S2.

[54] *See* section 733(a) of the Act.

[55] *Id.*

[56] *See* 19 CFR 351.301(b).

[57] *See* 19 CFR 351.301(b)(2).

[58] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[59] *See* 19 CFR 351.302; *see also, e.g., Time Limits Final Rule.*

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[60] Parties must use the certification formats provided in 19 CFR 351.303(g).[61] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[62]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: March 5, 2024

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to these investigations is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula $C_3 H_6 N_6$). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2024–05127 Filed 3–8–24; 8:45 am]

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[60] *See* section 782(b) of the Act.

[61] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[62] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska American Fisheries Act Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 3, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Alaska American Fisheries Act Reports.

OMB Control Number: 0648–0401.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection, revision).

Number of Respondents: 11.

Average Hours per Response: AFA Cooperative Contract 8 hours; Bering Sea Pollock Fishery Incentive Plan Agreement 50 hours; Bering Sea Pollock Fishery IPA Annual Report 80 hours; IPA administrative appeals 4 hours.

Total Annual Burden Hours: 358 hours.

Needs and Uses: The National Marine Fisheries Services (NMFS), Alaska Region, requests revision and extension of a currently approved information collection for American Fisheries Act reporting requirements.

NMFS Alaska Region manages the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area in the Exclusive Economic Zone off Alaska. The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* and other applicable laws. Regulations implementing the FMP are at 50 CFR part 679.

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA). The purpose of the AFA was to tighten U.S. ownership standards for U.S. fishing vessels under the Anti-reflagging Act and to provide the Bering Sea pollock fleet the opportunity to conduct its fishery in a more rational manner while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the Bering Sea pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels.

This information collection contains the annual and periodic reporting requirements for AFA cooperatives. These requirements include reports about on-going fishing operations of the cooperatives and reports focused on efforts to minimize salmon bycatch in the Bering Sea pollock fishery. These reporting requirements are at 50 CFR 679.21 and 679.61.

This information is used to manage the Bering Sea pollock fishery, to evaluate the salmon bycatch management measures, and to provide the public with information about how the program operates and information about bycatch reduction under this program. This information collection provides the Council and NMFS with information about the organization and fishing operations of the AFA cooperatives, allocations to the AFA cooperatives, and the effectiveness of the Chinook salmon and chum salmon bycatch management measures. This information is necessary to ensure long-term conservation and abundance of salmon and pollock, maintain a healthy marine ecosystem, and provide maximum benefit to fishermen and communities that depend on salmon and pollock.

The following changes have been made to this information collection. The AFA Annual Cooperative Report is removed from this collection because it was added to OMB Control Number 0648–0678 (Alaska Council Cooperative Annual Reports) in 2019 and was intended to be removed from OMB Control Number 0648–0401. The Incentive Plan Agreement (IPA) and the IPA Annual Report are renamed the Bering Sea Pollock Fishery Incentive Plan Agreement (IPA) and the Bering Sea Pollock Fishery IPA Annual Report, respectively to clarify the fishery that they are associated with.

Affected Public: Business or other for-profit organizations.

Frequency: Annually as needed.

Respondent's Obligation: Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act; American Fisheries Act. 16 U.S.C. 1801 *et seq.,* and other applicable laws. Regulations implementing the FMP are at 50 CFR part 679.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0401.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05132 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD493]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from July 1, 2024 through June 30, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Shell plans to conduct a four-dimensional (4D) ocean bottom node (OBN) survey over the Ursa Development, Mississippi Canyon Lease Block 809, and the surrounding lease blocks. (Note that a 4D survey here refers to a 3D survey that is repeated over time.) Shell plans to use a 32-element, 5,110 cubic inch (in^3) airgun array. Approximate water depths of the survey area range from 600 to 1800

meters (m). See section F of the LOA application for a map of the area.

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* two-dimensional (2D), three-dimensional (3D) narrow-azimuth (NAZ), 3D wide-azimuth (WAZ), Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern.

The planned 3D OBN survey will involve a single source vessel sailing along survey lines approximately 30 kilometers (km) in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Shell is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 15.7 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Shell in terms of predicted Level B harassment exposures. In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, as discussed above, estimated take numbers for this LOA are considered conservative due to differences between the airgun array (32 elements and 5,110 in^3), and in daily survey area planned by Shell (as mentioned above), as compared to those modeled for the rule.

The survey will take place over approximately 80 days, including 63 days of sound source operation within Zone 5. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (*e.g.,* 86 FR 5322, (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for Rice's whales and killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 and 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling has identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016; Garrison *et al.,* 2023), and Rice's whales have been detected within this depth band throughout the GOM (Soldevilla *et al.,* 2022, 2024). See discussion provided at, *e.g.,* 83 FR 29228, June 22, 2018; 83 FR 29280, June 22, 2018; 86 FR 5418, January 19, 2021.

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Shell's planned activities will overlap this depth range, with approximately 0.8 percent of the area expected to be ensonified by the survey above root-mean-squared pressure received levels (RMS SPL) of 160 decibel (dB) (referenced to 1 micropascal (re 1 µPa)) overlapping the 100–400 m isobaths. Therefore, while we expect take of Rice's whale to be unlikely, there is some reasonable potential for take of Rice's whale to occur in association with this survey. However, NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for Rice's whales would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected Rice's whale take (86 FR 5322, January 19, 2021; 86 FR 5403, January 19, 2021).

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include winter (December–March) and summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017 to 2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale).[4] However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322 and 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia spp.* or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0 and 10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, January 19, 2021; 86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as Rice's or killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of Rice's whales or killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to two animals for Rice's whale and up to seven animals for killer whales).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See table 1 in this notice and table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in table 1.

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	2	n/a	51	3.9
Sperm whale	1,657	700.9	2,207	31.8
Kogia spp	[3] 626	190.4	4,373	5.1
Beaked whales	7,314	738.7	3,768	19.6
Rough-toothed dolphin	1,258	360.9	4,853	7.4
Bottlenose dolphin	5,959	1,710.1	176,108	1.0
Clymene dolphin	3,539	1,015.6	11,895	8.5
Atlantic spotted dolphin	2,380	683.1	74,785	0.9
Pantropical spotted dolphin	16,058	4,608.7	102,361	4.5
Spinner dolphin	4,303	1,234.9	25,114	4.9
Striped dolphin	1,382	396.7	5,229	7.6
Fraser's dolphin	397	114.0	1,665	6.8
Risso's dolphin	1,040	306.7	3,764	8.1
Melon-headed whale	2,325	685.9	7,003	9.8
Pygmy killer whale	547	161.4	2,126	7.6
False killer whale	870	256.8	3,204	8.0
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	673	198.4	1,981	10.0

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322 and 86 FR 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 33 takes by Level A harassment and 593 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: March 5, 2024.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–05082 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 10, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0373 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Clifford Hutt, Fishery Management Specialist, NOAA Fisheries Highly Migratory Species Management Division, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910; 301–427–8542; or *cliff.hutt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection. These requirements apply to vessel owners in the Atlantic highly migratory species (HMS) Fishery. Under current regulations at 50 CFR 635.6, fishing vessels permitted for Atlantic HMS fisheries must display their official vessel numbers on their vessels. Flotation devices and high-flyers attached to certain fishing gears must also be marked with the vessel's official number to identify the vessel to which the gear belongs. These requirements are necessary for identification, law enforcement, and monitoring purposes.

Specifically, all vessel owners that hold a valid Atlantic HMS permit under 50 CFR 635.4, other than an Atlantic HMS Angling permit, are required to

display their official vessel identification number. Numbers must be permanently affixed to, or painted on, the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. In block Arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background. At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

Furthermore, the owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, Atlantic HMS Angling, or Atlantic HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

II. Method of Collection

There is no form or information collected under this requirement. Official vessel numbers issued to vessel operators are marked on the vessel and on flotation gear, if applicable.

III. Data

OMB Control Number: 0648–0373.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations (vessel owners).

Estimated Number of Respondents: 4,212.

Estimated Time per Response: 45 minutes to mark the vessel; 15 minutes each to mark highflyers, buoys, and floats.

Estimated Total Annual Burden Hours: 4,950 hours.

Estimated Total Annual Cost to Public: $513,810.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*)

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05134 Filed 3–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD533]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Eareckson Air Station Fuel Pier Repair in Alcan Harbor on Shemya Island, 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 Pacific Air Forces Regional Support Center (USAF) to incidentally harass marine mammals during construction activities associated with the Eareckson Air Station (EAS) Fuel Pier Repair in Alcan Harbor, Shemya Island, Alaska. There are no changes from the proposed authorization in this final authorization.

DATES: This authorization is effective from April 1, 2024 through March 31, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document 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 below.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA

statutory terms cited above are included in the relevant sections below.

Summary of Request

On May 15, 2023, NMFS received a request from the USACE on behalf of USAF for an IHA to take marine mammals incidental to construction associated with the EAS Fuel Pier Repair in Alcan Harbor on Shemya Island, Alaska. Following NMFS' review of the application, and discussions between NMFS and USAF, the application was deemed adequate and complete on September 19, 2023. The USAF's request is for take of 12 species of marine mammals, by Level B harassment and, for a subset of these species, Level A harassment. Neither USAF nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

The IHA will be effective from April 1, 2024 to March 31, 2025.

Description of the Specified Activity

The USAF plans to conduct long-term repairs on the only existing fuel pier at EAS on Shemya Island, Alaska. The activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include down-the-hole (DTH) drilling, vibratory and impact installation of temporary and permanent steel pipe piles, and vibratory removal of temporary steel pipe piles, and would introduce underwater sounds that may result in take, by Level A harassment and Level B harassment, of marine mammals. The marine construction associated with the planned activities is planned to occur over 160 days over 1 year, accounting for weather delays and mechanical issues. The IHA is effective from April 1, 2024 to March 31, 2025.

The fuel pier replacement project would include the installation of an interlocking steel pipe combi-wall system, which will require the installation and removal of 60 30-inch (in) temporary steel pipe piles and the installation of 208 42-in round steel interlocking pipe piles using vibratory, impact, and/or DTH methods.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 74451, October 31, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to USAF was published in the **Federal Register** on October 31, 2023 (88 FR 74451). That notice described, in detail, USAF's activity, the marine mammal species that may be affected by the activity, 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. During the 30-day public comment period, the United States Geological Survey noted that they have ''no comment at this time.'' NMFS received no other public comments.

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, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' 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' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and 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 or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska 2022 SARs (Young *et al.,* 2023). All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae:						
Fin Whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	UND (UND, UND, 2013) [4].	UND	0.6
Humpback Whale	*Megaptera novaeangliae*	Western North Pacific	E, D, Y	1,084, (0.088, 1,007, 2006).	3	2.8
		Mexico—North Pacific	T, D, Y	N/A (N/A, N/A, 2006) [5]	UND	0.56
		Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	19.6
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, -	N/A (N/A, N/A, N/A) [6]	UND	0

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Pacific	E, D, Y	UND (UND, UND, 2015) [7].	UND	3.5
Family Ziphiidae (beaked whales):						
Baird's beaked whale	*Berardius bairdii*	Alaska	-, -, N	N/A (N/A, N/A, N/A) [8]	N/A	0
Stejneger's Beaked Whale	*Mesoplodon stejnegeri*	Alaska	-, -, N	N/A (N/A, N/A, N/A) [8]	N/A	0
Family Delphinidae:						
Killer Whale	*Orcinus orca*	ENP Alaska Resident Stock	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
		ENP Gulf of Alaska, Aleutian Islands, and Bering Sea.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	Alaska	-, -, N	UND (UND, UND, 2015) [9].	UND	37
Harbor Porpoise	*Phocoena phocoena*	Bering Sea	-, -, Y	UNK (UNK, N/A, 2008) [10].	UND	0.4
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern Fur Seal	*Callorhinus ursinus*	Eastern Pacific	-, D, Y	626,618 (0.2, 530,376, 2019).	11,403	373
Steller Sea Lion	*Eumetopias jubatus*	Western, U.S.	E, D, Y	52,932 (N/A, 52,932, 2019).	318	254
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Aleutian Islands	-, -, N	5,588 (N/A, 5,366, 2018)	97	90

[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.nmfs.noaa.gov/pr/sars.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (explain if this is the case).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel 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] The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range. Based upon this estimate and the N_{min}, the PBR value is likely negatively biased for the entire stock.

[5] Abundance estimates are based upon data collected more than 8 years ago and therefore current estimates are considered unknown.

[6] Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

[7] The most recent abundance estimate is likely unreliable as it covered a small area that may not have included females and juveniles, and did not account for animals missed on the trackline. The calculated PBR is not a reliable index for the stock as it is based upon negatively biased minimum abundance estimate.

[8] Reliable abundance estimates for this stock are currently unavailable.

[9] The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

[10] The best available abundance estimate and N_{min} are likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range. PBR for this stock is undetermined due to this estimate being older than 8 years.

As indicated above, all 12 species (with 15 managed stocks) in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the project area are included in table 3–1 of the IHA application. While blue whale, gray whale, North Pacific right whale, Pacific white-sided dolphin, and ribbon seal could occur in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species all have extremely low abundance and most are observed in areas outside of the project area.

In addition, northern sea otter may be found the western Aleutians. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

A detailed description of the of the species likely to be affected by the USAF's project, including brief introductions to the 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 (88 FR 74451, October 31, 2023); 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. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential

techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth 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

The effects of underwater noise from the USAF's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (88 FR 74451, October 31, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the USAF's construction on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (88 FR 74451, October 31, 2023).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* impact and vibratory pile driving and removal and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes and/or high frequency species and/or phocids because predicted auditory injury zones are larger than for mid-frequency species and/or otariids. Auditory injury is unlikely to occur for other groups. The required 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 authorized for this activity. Below we describe how the authorized 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 how take is estimated.

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; Southall *et al.,* 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a

generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur. USAF's planned activity includes the use of continuous (vibratory pile driving and removal and DTH) and impulsive (impact pile driving and DTH) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa is/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). USAF's planned activity includes the use of impulsive (impact pile driving and DTH) and non-impulsive (vibratory pile driving and removal and DTH) 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: *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 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 planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* pile driving and removal and DTH). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 1286 kilometers^2 (km^2) (496 miles^2 (mi^2)), and the calculated distance to the farthest behavioral harassment isopleth is approximately 39,811 meters (m) (24,737.4 mi).

The project includes vibratory pile installation and removal, impact pile driving, and DTH. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in table 4. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021) (table 4 includes sound pressure and sound exposure levels for each pile type).

TABLE 4—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DTH, AND VIBRATORY PILE REMOVAL

Continuous sound sources	SSL at 10 m dB rms	Literature source
Vibratory Hammer		
42-in steel piles	168.2	Port of Anchorage Test Pile Program (table 16 in Austin *et al.,* 2016).
30-in steel piles	166	* NMFS Analysis (C. Hotchkin, April 24, 2023).
DTH		
42-in steel piles	174	Reyff & Heyvaert, 2019; Reyff, 2020.
30-in steel piles	174	Reyff & Heyvaert, 2019; Reyff, 2020.

Impulsive sound sources	dB rms	dB SEL	dB peak	Literature source
Impact Hammer				
42-in steel piles	192	179	213	Caltrans, 2020.
30-in steel piles	191	177	212	Caltrans, 2020.
DTH				
42-in steel piles	N/A	164	194	Reyff & Heyvaert, 2019; Reyff, 2020; Denes *et al.,* 2019.
30-in steel piles	N/A	164	194	Reyff & Heyvaert, 2019; Reyff, 2020; Denes *et al.,* 2019.

Note: dB peak = peak sound level; DTH = down-the-hole drilling; rms = root mean square; SEL = sound exposure level.
* NMFS generated this source level by completing a completed a comprehensive review of source levels relevant to southeast Alaska; NMFS compiled all available data from Puget Sound and southeast Alaska and adjusted the data to standardize distance from the measured pile to 10 m. NMFS then calculated average source levels for each project and for each pile type. NMFS weighted impact pile driving project averages by the number of strikes per pile following the methodology in Navy (2015).

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B * \mathrm{Log10}\,(R1/R2),$$

Where

TL = transmission loss in dB
B = transmission loss coefficient
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for the Shemya Island are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

TABLE 5—USER SPREADSHEET INPUTS

	Vibratory		Impact		DTH	
	30-in steel piles	42-in steel piles	30-in steel piles	42-in steel piles	30-in steel piles	42-in steel piles
	Installation or removal	Installation	Installation	Installation	Installation	Installation
Spreadsheet Tab Used.	A.1) Vibratory Pile Driving.	A.1) Vibratory Pile Driving.	E.1) Impact Pile Driving.	E.1) Impact Pile Driving.	E.2) DTH Pile Driving	E.2) DTH Pile Driving.
Source Level (SPL).	166 RMS	168.2 RMS	177 SEL	179 SEL	174 RMS, 164 SEL	174 RMS, 164 SEL.
Transmission Loss Coefficient.	15	15	15	15	15	15
Weighting Factor Adjustment (kHz).	2.5	2.5	2	2	2	2

TABLE 5—USER SPREADSHEET INPUTS—Continued

	Vibratory		Impact		DTH	
	30-in steel piles	42-in steel piles	30-in steel piles	42-in steel piles	30-in steel piles	42-in steel piles
	Installation or removal	Installation	Installation	Installation	Installation	Installation
Activity Duration per day (minutes).	60	120	120	180	150	180
Strike Rate per second.					10	10
Number of strikes per pile.			900	1,800		
Number of piles per day.	4	4	4	4	3	3
Distance of sound pressure level measurement.	10	10	10	10	10	10

TABLE 6—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING AND DTH

Pile type	Level A harassment isopleths (m)					Level B harassment isopleth (m)
	LF	MF	HF	PW	OW	
Vibratory						
42-in steel pipe piles	32.7	2.9	48.4	19.9	1.4	16,343
30-in Steel pipe piles	14.7	1.3	21.8	8.9	0.6	11,659
DTH						
42-in Steel pipe piles	2,549.4	90.7	3,036.7	1,364.3	99.3	39,811
30-in Steel pipe piles	2,257.6	80.3	2,689.2	1,208.2	88	39,811
Impact						
42-in steel pipe piles	2,015.1	71.7	2,400.3	1,078.4	78.5	1,359
30-in Steel pipe piles	933.8	33.2	1,112.3	499.7	36.4	1,166

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. We describe how the information provided is synthesized to produce a quantitative take estimate.

As described above, for some species (humpback whale, killer whale, Steller sea lion and harbor seal) observations within the project area from the prior monitoring were available to directly inform the take estimates, while for other species (fin whale, minke whale, sperm whale, Baird's beaked whale, Stejneger's beaked whale, Dall's porpoise, harbor porpoise and northern fur seal) they were not. Prior surveys include Protected Species Observer (PSO) monitoring completed at the project site on 60 days between June and August 2021 during the emergency fuel pier repair, island-wide faunal surveys completed by the USACE Engineer Research Development Center (ERDC) across 33 days between 2016 and 2019 (primarily in the spring and fall), and island-wide marine mammal surveys completed by the USACE Civil Works Environmental Resource Section on 26 days between May and October 2021. From all three surveys, data that were collected within the project area are primarily the basis for the take estimates because those data best represents what might be encountered there. Average group sizes used to inform Level B take estimates (which also underlie the estimates for Level A harassment) for all species with prior observations in the project area are primarily based on those data. Alternate methods utilizing average group sizes informed primarily by Alaska's Wildlife Notebook Series are used for species without prior observations.

Also of note, while the results are not significantly different, in some cases we recommended modified methods for estimating take from those presented by the applicant and have described them below. A summary of authorized take, including as a percentage of population for each of the species, is shown in table 7.

Fin Whale

No fin whale were reported during monitoring conducted for the EAS fuel pier emergency repair completed in 2021, nor during other surveys completed from Shemya Island (see application). Accordingly, average group size, estimated group size based on information shared in the Alaska Wildlife Notebook Series (Clark, 2008a), is used as the basis for the take estimates.

USAF requested 17 takes of fin whales by Level B harassment, using a calculation based on 0.002 groups of eight fin whales per hour of construction activity. NMFS concurs with USAF's predicted group size of fin whale (eight individuals), but since there are no observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence

estimate. Specifically, one group of eight fin whales is predicted every 2 construction months, based on the applicant's prediction that this species would be rare in the project area. The duration of the construction is 160 days (2.65 * the basic 60-day period) and 8 * 2.65 = 21 takes by Level B harassment).

Although the shutdown zone is larger than the Level A harassment zone for low frequency cetaceans, USAF indicates that at ≥2,000 m, it becomes more challenging to reliably detect low frequency cetaceans in some environmental conditions, and therefore it is possible that a fin whale could enter the Level A harassment zone during DTH activities and stay long enough to incur PTS before USAF detects the animal and shuts down. As such, USAF requested and NMFS authorized a small amount of take by Level A harassment of fin whales. NMFS calculated takes by Level A harassment by first determining the proportion of the area of largest Level A harassment zone (42-in DTH, 2,549 m) that occurs beyond the readily observable 2,000 m from the pile driving location (*i.e.,* 7.5 $km^2 - 5$ $km^2/7.5$ km^2 = 0.33). This ratio was multiplied by the estimated fin whale exposures, which is generally one group of eight fin whale that would occur every 2 construction months (or 60 days, adjusted by 1.2 to account for the 70 days that DTH activities are planned). Multiplying these factors (8 * 1.2 * 0.33) results in three takes by Level A harassment.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as both a Level A harassment take and a Level B harassment take, and therefore takes by Level B harassment calculated as described above are further modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 21 − 3 = 18).

Therefore, NMFS proposes to authorize 3 takes by Level A harassment and 18 takes by Level B harassment for fin whales, for a total of 21 takes.

Humpback Whale

Across 119 days of marine mammal surveys completed from Shemya Island between 2016 and 2021, seven humpback whales were observed in the project area. The average group size for humpback whales detected in the project area was two humpback whales per group detected.

For estimating take by Level B harassment where monitoring data confirmed the presence of the marine mammal species, NMFS concurred with USAF's approach. USAF requested take by Level B harassment by predicting that 0.07 groups of humpback whales would be sighted every hour, which was based on the applicant predicting this species would commonly occur within the project area. This was then multiplied by the average group size for humpback whales (two individuals), to achieve an hourly humpback rate. Finally, these numbers are multiplied by the hours of construction activity (0.07 * 2 * 1,101 = 154 takes by Level B harassment).

Although the shutdown zone is larger than the Level A harassment zone for low frequency cetaceans, USAF indicates that at ≥2,000 m, it becomes more challenging to reliably detect low frequency cetaceans in some environmental conditions, and therefore it is possible that humpback whales could enter the Level A harassment zone during DTH activities and stay long enough to incur PTS before USAF detects the animal and shuts down. As such, USAF requested and NMFS authorized a small amount of take by Level A harassment of humpback whales. NMFS calculated takes by Level A harassment by determining the proportion of the area of largest Level A harassment zone (42-in DTH, 2,549 m) that occurs beyond 2,000 m from the pile driving location (*i.e.,* 7.5 $km^2 - 5$ $km^2/7.5$ km^2 = 0.33) and multiplying this ratio by the estimated humpback whale exposures (0.07 groups of 2 humpback whale) that would occur every construction hour that DTH activities are planned (624 hours) (0.07 * 2 * 624 * 0.33 = 29 takes by Level A harassment).

For the reasons described above, takes by Level B harassment were modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 154 − 29 = 125).

Therefore, NMFS proposes to authorize 29 takes by Level A harassment and 125 takes by Level B harassment for humpback whales, for a total of 154 takes.

Minke Whale

No minke whales were reported during monitoring conducted for the EAS fuel pier emergency repair completed in 2021, nor during other surveys completed from Shemya Island (*e.g.,* see application). Accordingly, average group size, estimated based on group size information shared in the Alaska Wildlife Notebook Series (Clark, 2008a), is used as the basis for the take estimates (Guerrero, 2008b).

USAF requested seven takes of minke whales by Level B harassment, using a calculation of 0.002 groups of three minke whales per hour of construction activity. NMFS concurs with USAF's predicted group size of minke whale (three individuals), but since there are no observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, one group of three minke whales is predicted every 2 construction months, based on the applicant's prediction that this species would be rare in the project area. The duration of construction is 160 days (2.65 * the basic 60-day period, which corresponds to 2 months) and 3 * 2.65 = 8 takes by Level B harassment.

Although the shutdown zone is larger than the Level A harassment zone for low frequency cetaceans, USAF indicates that at ≥2,000 m, it becomes more challenging to reliably detect low frequency cetaceans in some environmental conditions, and therefore it is possible that a minke whale could enter the Level A harassment zone during DTH activities and stay long enough to incur PTS before USAF detects the animal and shuts down. As such, USAF requested and NMFS authorized a small amount of take by Level A harassment of minke whales. NMFS calculated takes by Level A harassment by determining the proportion of the area of largest Level A harassment zone (42-in DTH, 2,549 m) that occurs beyond the readily observable 2,000 m from the pile driving location (*i.e.,* 7.5 $km^2 - 5$ $km^2/7.5$ km^2 = 0.33).This ratio was multiplied by the estimated minke whale exposures, which is generally one group of three minke whales every 2 construction months (or 60 days), adjusted by 1.2 to account for the 70 days that DTH activities are planned. Multiplying these factors (1.2 * 0.33) results in one take by Level A harassment. Since the predicted average group size of minke whale is three, NMFS proposes to authorize three takes by Level A harassment of minke whale.

For reasons described above, takes by Level B harassment were modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 8 − 3 = 5).

Therefore, NMFS proposes to authorize three takes by Level A harassment and five takes by Level B harassment for minke whales, for a total of eight takes.

Sperm Whale

Across 119 monitoring days between 2016 and 2021, four sperm whales were observed on a single day from Shemya

Island, though outside of the project area (see application).

USAF requested 27 takes of sperm whale by Level B harassment, using a calculation based on of 0.006 groups of four sperm whales per hour of construction activity. NMFS concurs with USAF's predicted group size of sperm whale (four individuals, which corresponds to the number of sperm whales detected on a single day during Shemya Island marine mammal surveys), but since there are few observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, two groups of four sperm whales is predicted every 1 construction month based on sperm whales being one of the most frequently sighted marine mammals in the high latitude regions of the North Pacific, including the Bering Sea and the Aleutian Islands. The duration of the construction is 5 months and 2 * 4 * 5 = 40 takes by Level B harassment.

Due to the small Level A harassment zones (table 8), which do not reach deep water where sperm whales are expected to be encountered, coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for mid-frequency cetaceans (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for sperm whale. Therefore, NMFS authorized all 40 estimated exposures as takes by Level B harassment. Takes by Level A harassment for sperm whales are not requested nor are they authorized.

Baird's Beaked Whale

Baird's beaked whales are usually found in tight social groups (schools or pods) averaging between 5 and 20 individuals, but they have occasionally been observed in larger groups of up to 50 animals. Across 119 days of marine mammal surveys completed from Shemya Island between 2016 and 2021, no observations of Baird's beaked whale were recorded (see application). Accordingly, average group size, estimated based on group size information shared in the Alaska Wildlife Notebook Series (Guerrero, 2008a), is used as the basis for take estimates.

USAF requested 11 takes by Level B harassment, using a calculation based on 0.001 groups of ten Baird's beaked whales per hour of construction activity. NMFS concurs with USAF's predicted group size of Baird's beaked whale (10 individuals), but since there are no observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, 1 group of 10 Baird's beaked whales is predicted across the project, which is based on this species being shy and preferring deep waters and as such the applicant predicted they would be very rare in the project area. Therefore, NMFS proposes to authorize 10 takes of Baird's beaked whale by Level B harassment.

Due to the small Level A harassment zones (table 8), which do not reach deep water where Baird's beaked whales are expected to be encountered, coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for mid-frequency cetaceans (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for Baird's beaked whale. Therefore, NMFS authorized all 10 estimated exposures as takes by Level B harassment. Takes by Level A harassment for Baird's beaked whales are not requested nor are they authorized.

Stejneger's Beaked Whale

Across 119 days of marine mammal surveys completed from Shemya Island between 2016 and 2021, no observations of Stejneger's beaked whale were recorded (see application). Accordingly, average group size, estimated based on group size information shared in the Alaska Wildlife Notebook Series (Guerrero, 2008a), is used as the basis for take estimates.

USAF requested nine takes of Stejneger's beaked whale by Level B harassment, using a calculation based on of 0.001 groups of eight Stejneger's beaked whales per hour of construction activity. NMFS concurs with USAF's predicted group size of Stejneger's beaked whale (eight individuals), but since there are no observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, one group of eight Stejneger's beaked whales is predicted across the entirety of the project, based on this species being shy and preferring deep waters and as such the applicant predicted they would only be very rarely encountered in the project area. Therefore, NMFS proposes to authorize eight Stejneger's beaked whale by level B harassment.

Due to the small Level A harassment zones (table 8), which do not reach deep water where Stejneger's beaked whales are expected to be encountered, coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for mid-frequency cetaceans (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for Stejneger's beaked whale. Therefore, NMFS authorized all eight estimated exposures as takes by Level B harassment. Takes by Level A harassment for Stejneger's beaked whales are not requested nor are they authorized.

Killer Whale

Across 119 days of marine mammal surveys completed from Shemya Island between 2016 and 2021, 69 killer whales were observed in the project area. The average group size for killer whales detected in the project area was eight killer whales per group detected.

For estimating take by Level B harassment where monitoring data confirmed the presence of the marine mammal species, NMFS concurred with USAF's approach. USAF requested take by Level B harassment by predicting that 0.02 groups of killer whales would be sighted every hour, which was based on the applicant's prediction that this species would commonly be encountered in the project area. This was then multiplied by the average group size for humpback whales (eight individuals), to achieve an hourly killer whale rate. Finally, these numbers are multiplied by the hours of construction activity (0.02 * 8 * 1,101 = 176 takes by Level B harassment).

Due to the small Level A harassment zones (table 8), coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for mid-frequency cetaceans (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for killer whale. Therefore, NMFS authorized all 176 estimated exposures as takes by Level B harassment. Takes by Level A harassment for killer whale are not requested nor are they authorized.

Dall's Porpoise

No Dall's porpoise were reported during monitoring conducted for the EAS fuel pier emergency repair completed in 2021, nor during other surveys completed from Shemya Island (see application). Dall's porpoise generally travel in groups of 10 to 20 individuals but can occur in groups

with over hundreds of individuals (Wells, 2008). Accordingly, average group size, estimated based group size information shared in the Alaska Wildlife Notebook Series (Wells 2008), is used as the basis for the take estimates, is used as the basis for take estimates.

USAF requested 33 takes of Dall's porpoise by Level B harassment, using a calculation based on of 0.002 groups of 15 Dall's porpoise per hour of construction activity. NMFS concurs with USAF's predicted group size of Dall's porpoise (15 individuals), but since there are no observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, 1 group of 15 Dall's porpoise is predicted every 2 construction months, based on the applicant's prediction that this species would be rarely encountered in the project area. The duration of the construction is 160 days (2.65 * the basic 60-day period that corresponds to 2 construction months) and 15 * 2.65 = 40 takes by Level B harassment.

For most activities, NMFS calculated takes by Level A harassment by determining the ratio of the largest Level A harassment area for 42-in DTH activities (*i.e.,* 10.2 km^2 for a Level A harassment distance of 3,037 m) minus the area of the shutdown zone for Dall's porpoise (*i.e.,* 0.5 km^2 for a shutdown zone distance of 500 m) to the area of the Level B harassment isopleth (1,285.9 km^2) for a Level B harassment distance of 39,811 m (*i.e.,* (10.2 $km^2 - 0.5$ km^2)/ 1,285.9 km^2 = 0.008). We then multiplied this ratio by the number of estimated Dall's porpoise exposures calculated as described above for Level B harassment to determine take by Level A harassment (*i.e.,* 0.008 * 40 exposures = 0.32 takes by Level A harassment).

For Level A harassment during impact pile driving of 42-in piles, for which the Level A harassment zone is larger than the Level B harassment zone, NMFS estimates take based on 1 group of 15 Dall's porpoise every 2 months, or 60 days, in consideration of the 52 days (0.87 of 60) of impact driving of 42-in piles (15 Dall's porpoise * 0.87 months = 13.05) for a total of 13.37 takes by Level A harassment (0.32 + 13.05 = 13).

For reasons described above, takes by Level B harassment were modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 40 − 13 = 27).

Therefore, NMFS proposes to authorize 13 takes by Level A harassment and 27 takes by Level B harassment for Dall's porpoise, for a total of 40 takes.

Harbor Porpoise

Across 119 monitoring days between 2016 and 2021, one group of two to three harbor porpoise were observed from Shemya Island (see application), though outside of the project area. Average group size, estimated based on the Alaska Wildlife Notebook Series (Schmale, 2008), is used as the basis for take estimates.

USAF requested 11 takes of harbor porpoise by Level B harassment, using a calculation based on of 0.01 groups of 1 harbor porpoise per hour of construction activity. NMFS concurs with USAF's predicted group size of harbor porpoise (one individual), but since there are few observations of this species from Shemya Island, NMFS finds it more appropriate to estimate take by Level B harassment using a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, three groups of one harbor porpoise is predicted every 1 construction month. The duration of construction is 5 months and 3 * 5 = 15 takes by Level B harassment.

For most activities, NMFS calculated takes by Level A harassment by determining the ratio of the largest Level A harassment area for 42-in DTH activities (*i.e.,* 10.2 km^2 for a Level A harassment distance of 3,037 m) minus the area of the shutdown zone for harbor porpoise (*i.e.,* 0.5 km^2 for a shutdown zone distance of 500 m) to the area of the Level B harassment isopleth (1,285.9 km^2) for a Level B harassment distance of 39,811 m (*i.e.,* (10.2 $km^2 - 0.5$ km^2)/ 1,285.9 km^2 = 0.008). We then multiplied this ratio by the number of estimated harbor porpoise exposures calculated as described above for Level B harassment to determine take by Level A harassment (*i.e.,* 0.008 * 15 exposures = 0.12 takes by Level A harassment).

For Level A harassment during impact pile driving of 42-in piles, for which the Level A harassment zone is larger than the Level B harassment zone, NMFS estimates take based on three groups of one harbor porpoise could be taken by Level A harassment every 1 month, or 30 days in consideration of the 52 days (1.7 * 30) of impact pile driving of 42-in piles (3 groups of 1 harbor porpoise * 1.7 = 5.1) for a total of five takes by Level A harassment (0.12 + 5.1 = 5).

For reasons described above, takes by Level B harassment were modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 15 − 5 = 10).

Therefore, NMFS proposes to authorize 5 takes by Level A harassment and 10 takes by Level B harassment for harbor porpoise, for a total of 15 takes.

Northern Fur Seal

USAF requested 33 takes of northern fur seal by Level B harassment using a calculation based on 0.003 groups of eight northern fur seals per hour of construction activity. NMFS disagrees with USAF's predicted group size of northern fur seal, as these animals are typically solitary when at sea. Additionally, because there are no records of northern fur seal in the area, NMFS finds it more appropriate to estimate take by Level B harassment according to a less granular occurrence estimate (monthly) rather than USAF's hourly occurrence estimate. Specifically, one group of one northern fur seal every 1 construction month is predicted and 1 * 5 = 5 takes by Level B harassment.

Due to the small Level A harassment zones (table 8), coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for otariids (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for northern fur seal. Therefore, NMFS authorized all five estimated exposures as takes by Level B harassment. Takes by Level A harassment for northern fur seals are not requested nor are they authorized.

Steller Sea Lion

Steller sea lions are frequently observed around Shemya Island outside of the ensonified area, but only occasionally observed in Alcan Harbor and Shemya Pass (see application). Across 119 monitoring days between 2016 and 2021, 16 Steller sea lions were observed within the project area. The average group size for Steller sea lion detected in the project area as well as around Shemya Island was one Steller sea lion per detection.

For estimating take by Level B harassment where monitoring data confirmed the presence of the marine mammal species, NMFS concurred with USAF's planned approach. USAF requested take by Level B harassment by predicting that 0.09 groups of Steller sea lion would be sighted every hour, which was based on the applicant's prediction that this species would be more commonly encountered in the project area. This was then multiplied by the average group size for Steller sea lion (1 individual), to achieve an hourly steller sea lion rate. Finally, these numbers are multiplied by the hours of construction activity (0.09 * 1 * 1,101 = 99 takes by Level B harassment).

Due to the small Level A harassment zones (table 8), coupled with the implementation of shutdown zones, which will be larger than Level A harassment zones for otariids (described in the Mitigation section), NMFS concurs with USAF's assessment that take by Level A harassment is not anticipated for Steller sea lion. Therefore, NMFS authorized all 99 estimated exposures as takes by Level B harassment. Takes by Level A harassment for Steller sea lion are not requested nor are they authorized.

Harbor Seal

Across 119 monitoring days between 2016 and 2021, 54 harbor seals were observed within the project area. The average group size for harbor seals detected in the project area was one harbor seals per group.

For estimating take by Level B harassment where monitoring data confirmed the presence of the marine mammal species, NMFS concurred with USAF's planned approach. USAF requested take by Level B harassment by predicting that 0.14 groups of harbor seals would be sighted every hour, which was based on the fact that this species is expected to more commonly occur within the project area. This was then multiplied by the average group size for harbor seal (1 individual), to achieve an hourly harbor seal rate. Finally, these numbers are multiplied by the hours of construction activity (0.14 * 1 * 1,101 = 154 takes by Level B harassment).

NMFS initially calculated takes by Level A harassment by determining the ratio of the largest Level A harassment area for 42-in DTH activities (*i.e.,* 2.6 km^2 for a Level A harassment distance of 1364 m) minus the area of the shutdown zone for harbor seal (*i.e.,* 0.37 km^2 for a shutdown zone distance of 400 m) to the area of the Level B harassment isopleth (1,285.9 km^2) for a Level B harassment distance of 39,811 m (*i.e.,* (2.6 $km^2 - 0.37$ km^2)/1,285.9 km^2 = 0.002). We then multiplied this ratio by the number of estimated harbor seal exposures calculated as described above for Level B harassment to determine take by Level A harassment (*i.e.,* 0.002 * 154 exposures = 0.3 takes by Level A harassment).

Because harbor seals typically inhabit areas closer to shore rather than distances represented by the largest level B zone (39,811 m), NMFS determined that the method above could underestimate potential take by Level A harassment. NMFS accordingly estimated additional takes by Level A harassment by determining the ratio of harbor seals that were observed beyond the shutdown zone isopleth compared to the harbor seals that were observed closer to construction activities during the EAS fuel pier emergency repair that was completed in 2021 (*i.e.,* 11/38 = 0.29 harbor seals). We then multiplied this ratio by the total number of estimated harbor seal exposures to determine take by Level A harassment (*i.e.,* 0.29 * 154 exposures = 45) for a total of 45 takes by Level A harassment (0.3 + 45 = 45.3).

For reasons described above, takes by Level B harassment were modified to deduct the authorized amount of take by Level A harassment (*i.e.,* 154 − 45 = 109).

Therefore, NMFS proposes to authorize 45 takes by Level A harassment and 109 takes by Level B harassment for harbor seal, for a total of 154 takes.

TABLE 7—AUTHORIZED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Authorized take		Authorized take as a percentage of stock abundance
		Level B harassment	Level A harassment	
Fin Whale	Northeast Pacific	18	3	<1
Humpback Whale	Western North Pacific	3	1	<1
	Mexico—North Pacific	9	2	1.2
	Hawai'i	113	26	1.2
Minke Whale	Alaska	5	3	<1
Sperm Whale	North Pacific	40	0	16.4
Baird's beaked whale	Alaska	10	0	(*)
Stejneger's beaked whale	Alaska	8	0	(*)
Killer whale	ENP Alaska Resident Stock	176	0	9.2
	ENP Gulf of Alaska, Aleutian Islands, and Bering Seal			30
Dall's Porpoise	Alaska	26	13	<1
Harbor Porpoise	Bering Seal	10	5	<1
Northern Fur Seal	Eastern Pacific	5	0	<1
Steller Sea Lion	Western, U.S.	99	0	<1
Harbor Seal	Aleutian Islands	109	45	2.8

* Reliable abundance estimates for these stock are currently unavailable.

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, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope,

range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

USAF must ensure that construction supervisors and crews, the monitoring team and relevant USAF 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.

Mitigation for Marine Mammals and Their Habitat

Shutdown Zones—For all pile driving/removal and DTH activities, USAF would implement shutdowns within designated zones. 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). Shutdown zones vary based on the activity type and marine mammal hearing group (table 8). In most cases, the shutdown zones are based on the estimated Level A harassment isopleth distances for each hearing group, as requested by USAF. However, in cases where it would be challenging to detect marine mammals at the Level A isopleth, (*e.g.,* for high frequency cetaceans and phocids during DTH activities and impact pile driving), smaller shutdown zones have been established (table 8). Additionally, USAF has agreed to implement a minimum shutdown zone of 25 m during all pile driving and removal activities and DTH.

Finally, construction supervisors and crews, PSOs, and relevant USAF staff must 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, as necessary to avoid direct physical interaction. If an activity 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 indicated in table 8 or 15 minutes have passed for delphinids or pinnipeds or 30 minutes for all other species without re-detection of the animal.

Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

TABLE 8—SHUTDOWN ZONES

Activity	Pile diameter	Shutdown zones (m)				
		LF	MF	HF	PW	OW
Vibratory Installation or Removal	42-in	50				
	30-in	25				
DTH	42-in	2,600	100	500	400	100
	30-in	2,300	80			90
Impact Pile	42-in	2,100				80
	30-in	1,000	50			50

Protected Species Observers—The number and placement of PSOs during all construction activities (described in the Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. USAF would employ at least two PSOs for all pile driving and DTH activities.

Monitoring for Level B Harassment—PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables 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. If a marine mammal enters the Level B harassment zone, PSOs will document the marine mammal's presence and behavior.

Pre and Post-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 will observe the shutdown, Level A harassment, and Level B harassment for a period of 30 minutes. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. If the shutdown zone is obscured by fog or poor lighting conditions, in-water construction activity will not be initiated until the entire shutdown zone is visible. Pile driving 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 shutdown zones, pile driving activity 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 or 15 minutes have passed for delphinids or pinnipeds or 30 minutes have passed for all other species without re-detection of the animal. If 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.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the 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, with each strike followed by a 30-second waiting period. This

procedure would be conducted a total of three times before impact pile driving begins. 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. Soft start is not required during vibratory pile driving and removal activities.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the planned 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.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring—Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring and Mitigation Plan. Marine mammal monitoring during pile driving and removal and DTH activities must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor), and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization.
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction activity pursuant to a NMFS-issued incidental take authorization; and,
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs must also 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 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 note 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.

Visual monitoring will be conducted by a minimum of two trained PSOs positioned at suitable vantage points. One PSO will have an unobstructed view of all water within the shutdown zone and will be stationed at or near the pier. Remaining PSOs will be placed at one or more of the observer monitoring locations identified on figure 3–3 of the marine mammal monitoring and mitigation plan, in order to observe as much as the Level A and Level B harassment zone as possible. All PSOs will have access to 20 by 60 spotting scope on a window mount or tripod.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will 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

USAF will submit a draft marine mammal monitoring report 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 monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (1) The number and type of piles that were driven and the method (*e.g.,* impact, vibratory, DTH); (2) Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and (3) For DTH drilling, duration of operation for both impulsive and non-pulse components;
- 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: (1) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) Time of sighting; (3) 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; (4) Distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) Estimated number of animals (min/max/best estimate); (6) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) Animal's closest point of approach and estimated time spent within the harassment zone; (8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and,
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. 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 Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *itp.fleming@noaa.gov*) and to the Alaska regional stranding network (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and,
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 1, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and DTH activities associated with the EAS fuel pier repair project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species Level A harassment, from underwater sounds generated by pile driving and DTH. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level B harassment or Level A harassment, identified above, while activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for otariids and mid-frequency cetaceans, due to the application of planned mitigation measures, such as shutdown zones that encompass Level A harassment zones for these species. The potential for harassment would be minimized through the implementation of planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for six species (harbor porpoise, Dall's porpoise, harbor seal, fin whale, humpback whale, and minke whale) as the Level A harassment zone exceeds the size of the shutdown zones (high frequency cetaceans and phocids), or, in the case of low frequency cetaceans, the shutdown zone is so large that it is possible that a minke whale, fin whale, or humpback whale could enter the Level A harassment zone and remain within the zone for a duration long enough to incur PTS before being detected.

Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration

than are expected to occur here in order to incur any more than a small degree of PTS.

Given the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, 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.

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. USAF would also shut down pile driving activities if marine mammals enter the shutdown zones (table 8) further minimizing the likelihood and degree of PTS that would be incurred.

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, 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. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The project area does overlap a Biologically Important Area (BIA) identified as important for feeding by sperm whale (Brower *et al.,* 2022). The BIA that overlaps the project area is active April through September, which overlaps USAF's planned work period (April to October). White the BIA is considered to be of higher importance, the area of the BIA is very large, spanning the island chain, and the project area is very small in comparison. Further sperm whales utilize deeper waters to feed, and while the Level B harassment zone does extend into deeper waters, the sound levels at the distances that overlay deeper water where sperm whales might be foraging would be of comparatively lower levels. Given the extensive options for high quality foraging area near and outside of the project area, any impacts to feeding sperm whales would not be expected to impact the survival or reproductive success of any individuals.

The ensonified area also overlaps ESA-designated critical habitat for western DPS Steller sea lion. Specifically, the Level B ensonified area overlaps with the aquatic zones of three designated major haulouts to the east and northwest of the project site: Shemya Island Major Haulout, Alaid Island Major Haulout, Attu/Chirikof Point Major Haulout. The ensonified area Level B harassment zone related to implementation of the planned project, described in the Estimated Take of Marine Mammals section, overlaps with the designated aquatic zone of all three designated major haulouts.. No Steller sea lions have been observed on Shemya Island Major Haulout (2.75 nm to the east of the project site) during the most recent surveys (between 2015 and 2017) and only one Steller sea lion was observed at Attu/Chirikof Point Major Haulout (24 nm northwest of the project site). An average of 68 non-pups and 7 pups were observed annually during this time at Alaid Island Major Haulout, which is 5 nautical miles northwest of the project site. The construction site itself does not overlap with critical habitat. Take by Level B harassment of steller sea lions has been authorized to account for those that are occasionally observed in low numbers in Alcan Harbor and Shemya Pass, however, the project is not expected to have significant adverse impacts on Steller sea lion critical habitat.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would 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. We do not expect pile driving activities to have significant consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and invertebrates, are not expected to cause significant or long-term negative consequences.

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 any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment of six species is authorized;
- Level A harassment takes authorized for six species are expected to be of a small degree;
- While impacts would occur within areas that are important for feeding for sperm whale, because of the small footprint of the activity relative to the area of these important use areas, we do not expect impacts to the reproduction and survival of any individuals;
- 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;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and,
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for

specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The instances of take NMFS proposes to authorize are below one-third of the estimated stock abundance for all stocks (table 7). The number of animals that we expect to authorize to be taken from these stocks would be considered small relative to the relevant stocks' abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

The best available abundance estimate for fin whale is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range, but there are known to be over 2,500 fin whales in the northeast Pacific stock (Muto *et al.,* 2021). As such, the 18 takes by Level B harassment and 3 takes by Level A harassment authorized, compared to the abundance estimate, shows that less than 1 percent of the stock would be expected to be impacted.

The most recent abundance estimate for the Mexico-North Pacific stock of humpback whale is likely unreliable as it is more than 8 years old. The most relevant estimate of this stock's abundance in the Bering Sea and Aleutian Islands is 918 humpback whales (Wade, 2021), so the 9 authorized takes by Level B harassment and 2 authorized takes by Level A harassment, is small relative to the estimated abundance (1.2 percent), even if each authorized take occurred to a new individual.

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.,* 2006), so the 5 authorized takes by Level B harassment, and 3 authorized takes by Level A harassment, compared to the abundance estimate, shows that less than 1 percent of the stock would be expected to be impacted.

The most recent abundance estimate for sperm whale in the North Pacific is likely unreliable as it is more than 8 years old and was derived from data collected in a small area that may not have included females and juveniles, and did not account for animals missed on the trackline. The minimum population estimate for this stock is 244 sperm whales, so the 40 authorized takes by Level B harassment is small relative to the estimated survey abundance, even if each authorized take occurred to a new individual.

There is no abundance information available for any Alaskan stock of beaked whale. However, the take numbers are sufficiently small (8 and 10 takes by Level B harassment for Stejneger's beaked whale and Baird's beaked whale, respectively) that we can safely assume that they are small relative to any reasonable assumption of likely population abundance for these stocks. For reference, current abundance estimates for other beaked whale stocks in the Pacific include 1,363 Baird's beaked whales (California/Oregon/Washington stock), 3,044 Mesoplodont beaked whales (CA/OR/WA stock), 5,454 Cuvier's beaked whales (CA/OR/WA stock), 564 Blainville's beaked whales (Hawai'i Pelagic stock), 2,550 Longman's beaked whales (Hawai'i stock), and 3,180 Cuvier's beaked whales (Hawai'i Pelagic stock).

The Alaska stock of Dall's porpoise has no official NMFS abundance estimate for this area, as the most recent estimate is greater than 8 years old. The most recent estimate was 13,110 animals for just a portion of the stock's range. Therefore, the 26 takes by Level B harassment and 13 takes by Level A harassment authorized for this stock, compared to the abundance estimate, shows that less than 1 percent of the stock would be expected to be impacted.

For the Bering Sea stock of harbor porpoise, the most reliable abundance estimate is 5,713, a corrected estimate from a 2008 survey. However, this survey covered only a small portion of the stock's range, and therefore, is considered to be an underestimate for the entire stock (Muto *et al.,* 2022). Given the 10 takes by Level B harassment authorized for the stock, and 5 takes by Level A harassment authorized for the stock, compared to the abundance estimate, which is only a portion of the Bering Sea Stock, shows that, at most, less than 1 percent of the stock would be expected to be impacted.

Based on the analysis contained herein of the planned activity (including the planned mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by, (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

No subsistence hunting occurs on Shemya Island, which is a USAF Air Station; Access to the island is only provided by military aircraft and USAF-contracted charter planes for crews and workers. The nearest community that engages in subsistence hunting is located on Adak, Alaska which is 640 km (399 mi) to the east. Historically, an Alaska Native community on Attu, 60 km (37 mi) to the west, hunted for subsistence, but that community was destroyed during WWII and the residents that survived internment did not return to the island.

Based on the description of the specified activity, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from USAF's planned activities.

Endangered Species Act

Section 7(a)(2) of the 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 Alaska Regional Office.

There are four marine mammal species (northeast Pacific fin whale, Mexico-North Pacific and western North Pacific humpback whale, North Pacific sperm whale, and western DPS Steller sea lion) with confirmed occurrence in the project area that are listed as endangered under the ESA. The NMFS Alaska Regional Office Protected Resources Division issued a Biological Opinion on March 1, 2024 under section 7 of the ESA, on the issuance of an IHA to USAF under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of northeast Pacific fin whale, Mexico Pacific and western North Pacific humpback whale, North Pacific sperm whale, and western DPS Steller sea lion and is not likely to destroy or adversely modify western DPS Steller sea lion critical habitat.

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 evaluate our proposed action (*i.e.,* the issuance of an IHA) and alternatives 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 NAO 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 this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to USAF for the potential harassment of small numbers of 12 marine mammal species incidental to the Eareckson Air Station (EAS) Fuel Pier Repair in Alcan Harbor, Shemya Island, Alaska, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: March 6, 2024.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD775]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Habitat Committee (HC) will hold an online public meeting.

DATES: The online meeting will be held Tuesday, March 26, 2024, from 8:30 a.m. to 4 p.m., Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and directions on how to attend the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the HC to consider items on the Pacific Council's April meeting agenda and to prepare supplemental reports as necessary. Topics will include Current Habitat Issues, the National Marine Sanctuary report, Council Operations and Priorities, and Future Meeting Agenda and Workload Planning. Other topics may be considered as necessary.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 5, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05028 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD776]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a hybrid meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 26, 2024, at 9:00 a.m.

ADDRESSES:

Meeting address: This meeting will be held at Hotel Providence, 139 Matheson Street, Providence, RI 02903; telephone: (401) 490–8000.

Webinar URL information: https://attendee.gotowebinar.com/register/6726267218504115289.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Ph.D., Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will meet to discuss Scallop and Habitat Plan Development Team analyses of four concept areas for potential scallop access on the Northern Edge of Georges Bank. The Advisory Panel will provide recommendations to the Scallop

Committee about how these analyses could be used to inform development of management alternatives for the joint Habitat-Scallop framework. This discussion is expected to focus on spatial alternatives (configuration of scallop access areas), but other objectives and alternatives may be discussed. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Ph.D.,

Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 5, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05029 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD777]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Habitat Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, March 26, 2024, at 1:30 p.m.

ADDRESSES:

Meeting address: This meeting will be held at Hotel Providence, 139 Matheson Street, Providence, RI 02903; telephone: (401) 490–8000.

Webinar registration URL information: https://attendee.gotowebinar.com/register/8167209092541829461.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will meet to discuss Scallop and Habitat Plan Development Team analyses of four concept areas for potential scallop access on the Northern Edge of Georges Bank. The Advisory Panel will provide recommendations to the Habitat Committee about how these analyses might be used to inform development of management alternatives for the joint Habitat-Scallop framework. This discussion is expected to focus on spatial alternatives (configuration of scallop access areas), but other objectives and alternatives may be discussed. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: March 5, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05027 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; International Design Application (Hague Agreement)

The United States Patent and Trademark Office (USPTO) will submit the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 19, 2023 during a 60-day comment period (88 FR 87754). This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: International Design Application (Hague Agreement).

OMB Control Number: 0651–0075.

Needs and Uses: The Patent Law Treaties Implementation Act of 2012 [1] (PLTIA) amends the patent laws to implement the provisions of the Geneva Act of the Hague Agreement Concerning International Registration of Industrial Designs (hereinafter ''Hague Agreement'') in title 1, and the Patent Law Treaty [2] (PLT) in title 2. The Hague Agreement is an international agreement that enables an applicant to file a single international design application which may have the effect of an application for protection for the design(s) in countries and/or intergovernmental organizations that are Parties to the Hague Agreement (the ''Contracting Parties'') designated in the applications. The United States is a Contracting Party to the Hague Agreement, which took effect with respect to the United States on May 13, 2015. The Hague Agreement is

[1] *https://www.congress.gov/112/plaws/publ211/PLAW-112publ211.pdf.*

[2] *https://wipolex.wipo.int/en/text/288773.*

administrated by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) located in Geneva, Switzerland.

Under the Hague Agreement, U.S. applicants can file international design applications in English ''indirectly'' through the United States Patent and Trademark Office (USPTO), which will forward the applications to the IB or ''directly'' with the IB. An international design application is subject to the payment of three types of fees: (1) a basic fee, (2) a publication fee, and (3) in respect of each Contracting Party where protection is sought, either in a standard or an individual designation fee. All applications are subject to a three-level structure of standard fees, which reflects the level of examination carried out by the Office of a Contracting Party. Also, an additional fee is required where the application contains a description that exceeds 100 words. In addition, a transmittal fee is required for international design applications filed through an office of indirect filing. Thus, international design applications filed through the USPTO as an Office of indirect filing are subject to payment of a transmittal fee for processing and forwarding the international design applications to the IB. The fees required by the IB may be paid either directly to the IB or through the USPTO as an office of indirect filing in the amounts specified on the World Intellectual Property Organization website. If applicants want to pay the required fees through USPTO as an office of indirect filing, the fees must be paid no later than the date of payment of the transmittal fee. The fees will then be forwarded to the IB. The industrial design or designs will be eligible for protection in all the Contracting Parties designated by applicants.

The IB ascertains whether the international design application complies with formal requirements, registers the international design to the international register, and publishes the international registration in the International Designs Bulletin. The international registration contains all of the data of the international application, any reproduction of the international design, date of the international registration, number of the international registration, and the relevant class of the International Classification.

The IB will provide a copy of the publication of the international registration to each Contracting party designated by the application. A designated Contracting Party may perform a substantive examination of the design application. The USPTO will perform a substantive examination for patentability of the international design application, as in the case of regular U.S. design applications.

This information collection covers all the necessary information required for an international design application that is filed through the USPTO as an Office of indirect filing and those filed directly through the IB. The information in this collection is used to register a design patent under the provisions of the Hague Agreement. The majority of the items are WIPO forms managed by the IB, but this information collection also includes two forms maintained by the USPTO.

Forms: (WIPO DM = WIPO Dessins et Modeles (design representations); PTOL = Patent Trademark Office Legal).

- PTO 1595: (Recordation Form Cover Sheet)
- PTOL 85 Part B (Hague): (Fee(s) Transmittal)
- WIPO DM/1 (E): (Application for International Application)
- WIPO DM/1/I (E): (Annex I: Oath or Declaration of the Creator under Rule 8(1)(a)(ii) of the Common Regulations)
- WIPO DM/1/III (E): (Annex III: Information on Eligibility for Protection under Rule 7(5)(g) and Section 408(d) of the Administrative Instructions)
- WIPO DM/1/IV (E): (Annex IV: Reduction of United States Individual Designation Fee under Section 408(b) of the Administrative Instructions)
- WIPO DM/1/V (E): (Annex V: Supporting Document(s) Concerning Priority Claim under Article 4 of the Paris Convention—Korean Intellectual Property Office (KIPO))
- WIPO DM/7 (E): (Appointment of a Representative)

Two forms listed above are used by the processes covered in this information collection, but receive OMB approval and clearance through other USPTO information collections. These forms are:

- PTO 1595—approved through USPTO information collection 0651–0027 (Recording Assignments)
- PTOL 85 Part B (Hague)—approved through USPTO information collection 0651–0033 (Post Allowance and Refiling)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 1,231 respondents.

Estimated Number of Annual Responses: 1,231 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 15 minutes (0.25 hours) and 6 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 2,052 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $3,708,240.

This information collection may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search feature and entering the title of the information collection or the OMB Control Number, 0651–0075.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0075 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 2313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–05052 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2022–0042]

Extension of the First-Time Filer Expedited Examination Pilot Program

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: On March 9, 2023, the United States Patent and Trademark Office (USPTO) implemented the First-Time Filer Expedited Examination Pilot Program, which permits patent applications from certain micro entity

first-time filers to be advanced out of turn for examination and reviewed earlier (accorded special status). The pilot program was originally scheduled to end on March 11, 2024. In view of the continued interest in the program, the USPTO is extending it until either March 11, 2025, or until the date on which the USPTO grants a total of 1,000 petitions since the start of the pilot program, whichever occurs first. All pilot parameters will remain the same as those for the original pilot.

DATES:

Applicable Date: March 11, 2024.

Duration: The First-Time Filer Expedited Examination Pilot Program will continue to run until either March 11, 2025, or until the date on which the USPTO grants a total of 1,000 petitions since the start of the pilot program, whichever occurs first. Therefore, petitions to make special under the First-Time Filer Expedited Examination Pilot Program must be filed on or before March 11, 2025. The USPTO may further extend the pilot program (with or without modifications) or terminate it depending on factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the program is terminated, the USPTO will notify the public. The USPTO will continue to indicate the number of applications accepted into the program on the First-Time Filer Expedited Examination Pilot Program web page (*www.uspto.gov/FirstTimePatentFiler*).

FOR FURTHER INFORMATION CONTACT: Brannon Smith, Legal Advisor (571–270–1601 or *Brannon.Smith@uspto.gov*); or Susy Tsang-Foster, Senior Legal Advisor (571–272–7711 or *susy.tsang-foster@uspto.gov*), of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Questions regarding electronic application filing may be directed to the Patent Electronic Business Center at 866–217–9197 during its operating hours of 6 a.m. to midnight ET, Monday-Friday, or *ebc@uspto.gov.*

Questions regarding a filed petition to make special under this pilot may be directed to the Office of Petitions at 571–272–3282 during its operating hours of 8:30 a.m. to 5 p.m. ET, Monday-Friday.

SUPPLEMENTARY INFORMATION: The USPTO published a notice of the implementation of the First-Time Filer Expedited Examination Pilot Program on March 9, 2023. See First-Time Filer Expedited Examination Pilot Program, 88 FR 14607 (March 9, 2023) (First-Time Filer Notice). The pilot program is one of the initiatives under the USPTO's Council for Inclusive Innovation to increase access to the patent system for inventors who are new to the patent application process, including those in historically underserved geographic and economic areas. The First-Time Filer Notice established that micro entity first-time filers who meet the requirements specified in the notice may have their applications examined out of turn. The program was established under 37 CFR 1.102(d) without requiring either the 37 CFR 1.17(h) fee for a petition to make special or all conditions of the accelerated examination program set forth in section 708.02(a), subsection I, of the Manual of Patent Examining Procedure (9th Edition, Rev. 07.2022, February 2023).

The First-Time Filer Notice established that the pilot program would run until March 11, 2024. In view of the continued interest in the pilot program, the USPTO is hereby extending the program through March 11, 2025, or until the date on which the USPTO grants a total of 1,000 petitions since the start of the pilot program, whichever occurs first. The extension will also allow the USPTO to continue its evaluation of the pilot program. The requirements of the pilot program have not been modified.

Various stakeholders from around the world have filed petitions to participate in the pilot program—they include pro se inventors, middle school students, and small companies. To date, over 350 petitions requesting participation in the pilot program have been filed, over 130 applications have been accepted into the program, and more than 15 patents have been granted under the program. The USPTO may again extend the pilot program (with or without modifications) depending on the feedback from the participants, continued interest, and the effectiveness of the pilot program.

The USPTO maintains a web page for the First-Time Filer Expedited Examination Pilot Program (*www.uspto.gov/FirstTimePatentFiler*). The web page includes frequently asked questions, a recorded webinar about the program, and detailed information about how to apply. The web page further includes links to educational resources to help inventors become reasonably trained on the basics of the USPTO's patent application process. Interested parties are strongly encouraged to review all the resources available on the program web page prior to applying.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–05102 Filed 3–8–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2024–HQ–0004]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the USACE announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters, USACE, 441 G Street NW, Washington, DC 20314–1000, ATTN: Mr. Matt Wilson, or call 202–761–5856.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USACE Regulatory Program General Forms; ENG Forms 4336, 4345, 6082, 6233, 6284–6287, 6294, and 6295; OMB Control Number 0710–0003.

Needs and Uses: The USACE (Corps), through its Regulatory Program, regulates certain activities in waters of the United States (WOTUS), pursuant to Section 404 of the Clean Water Act (CWA). WOTUS are defined under 33 CFR part 328. The Corps also regulates certain activities in ''navigable waters of the United States'' pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). The information collected is used to evaluate, as required by law, proposed construction or filling in WOTUS that result in impacts to the aquatic environment and nearby properties, and to determine which type of permit would be required if one was needed. Respondents are private landowners, businesses, nonprofit organizations, and government agencies. Respondents also include sponsors of proposed and approved mitigation banks and in-lieu fee programs.

The USACE is required by three Federal laws, passed by Congress, to regulate construction-related activities in waters of the United States. This is accomplished through the review of applications for permits to do this work. There are five types of permits that may be used. The ENG 4345 form used for standard permit applications has been in use since the 1970s and the request to extend the expiration date is being provided in this notice. The ENG 6082 used for Nationwide Permits (NWP) pre-construction notifications has been in use for several years. NWPs are one type of permit authorization that involves a streamlined review process to ensure that no more than minimal individual or cumulative adverse environmental effect result from construction of the proposed activity. NWPs authorize discharges of dredged or fill material into waters of the United States pursuant to section 404 of the CWA and structures or work in navigable waters under section 10 of the Rivers and Harbors Act of 1899. With the exception of the ENG 4345, use of the forms is optional, but allows the Corps to collect the information needed to evaluate the applicants' proposal to determine eligibility for authorization. The Corps will provide outreach materials to guide the public in which of the forms should be used and how using the form and providing the information requested can reduce the time it takes to review whether an application is complete. The information collected is used to evaluate, as required by law, proposed construction or filling in WOTUS that result in impacts to the aquatic environment and nearby properties, and to determine which type of permit would be required if one was needed.

In addition to the renewal of the ENG 4345 and ENG 6082, the Corps is also proposing seven new enterprise-level collections for (1) Notice of USACE Permit (ENG 4336), (2) Regulatory Violation Complaint (ENG 6284), (3) Certification of Compliance with Department of the Army Permit (ENG 6285), (4) Request for Pre-Application Meeting (ENG 6286), (5) Notification of Administrative Appeal Options and Process and Request for Appeal (ENG 6287), (6) Right of Entry (ENG 6294), and (7) Authorization to Act as an Agent (ENG 6295). The Corps is proposing to add these seven new forms to the collection to facilitate common requests from the public in a streamlined and standardized fashion that will be common across Corps districts. This collection would include new forms to certify compliance with Corps permits, request a pre-application meeting, request an administrative appeal, and/or report a violation. The Corps also proposes to incorporate its Customer Service Survey (ENG 6233) into this collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; State; local or Tribal government.

Annual Burden Hours: 490,506.

Number of Respondents: 240,444.

Responses per Respondent: 1.

Annual Responses: 240,444.

Average Burden per Response: 2.04 hours.

Frequency: On occasion.

Dated: February 28, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05059 Filed 3–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualitative Research to Better Understand the Experiences of Racial/Ethnic Minority Service Members; DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations; OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 314.

Responses per Respondent: 1.

Annual Responses: 314.

Average Burden per Response: 1.42 hours.

Annual Burden Hours: 446.

Needs and Uses: In 2021, at the direction of President Biden, Secretary of Defense Lloyd Austin ordered an Independent Review Commission (IRC) to review sexual assault in the military and provide recommendations to remedy the issue within the DoD. In issuing their report, among other recommendations, the IRC advised ''the Department should commission qualitative research to better understand the experiences of racial/ethnic

minority service members and their perceptions of climate, attitudes, and experiences with sexual assault and sexual harassment, and gender and racial discrimination,'' (Recommendation c7.1). This proposed research is in response to that specific recommendation by the IRC to better understand the intersection of gender, race, and ethnicity and experiences of sexual assault, sexual harassment, gender discrimination, and racial discrimination.

Furthermore, this research will address a critical knowledge gap that exists within the DoD. The DoD is committed to diversity, equity, and inclusion, and has conducted past research in this area; however, there are limited data on how racial/ethnic minority Service members perceive and experience sexual assault, sexual harassment, gender discrimination, and racial discrimination. This gap persists despite research that indicates racial/ethnic minority Service members are at an increased risk for these unwanted experiences (Breslin et al., 2022; Daniel et al., 2019). Using data from the 2017 Workplace and Equal Opportunity Survey of Active-Duty Members, researchers found Active-duty Service members who reported an unhealthy diversity and inclusion climate (*e.g.,* experienced racial/ethnic harassment and discrimination, hazing/bullying) were more likely to identify as racial/ethnic minority members, female, and/or not heterosexual (Daniel et al., 2022). As experiences of sexual assault, sexual harassment, gender discrimination, and racial discrimination are associated with decreased health (*e.g.,* overall wellbeing, increased depression, anxiety), they threaten not only the health and wellbeing of individual Service members but the overall health and readiness of the military (Daniel et al., 2022). With the DoD already facing significant recruiting shortfalls the past few years, these systemic risks for racial/ethnic Service members further threaten recruitment and retention in the military.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 28, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05060 Filed 3–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–HA–0102]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Travis Air Force Base Exceptional Family Member Program (EFMP) Pilot Program Evaluation Survey; OMB Control Number 0720–EFMP.

Type of Request: New.

Number of Respondents: 240.

Responses per Respondent: 1.

Annual Responses: 240.

Average Burden per Response: 11 minutes.

Annual Burden Hours: 44.

Needs and Uses: The 60th Medical Group (60 MDG) at David Grant Medical Center on Travis Air Force Base is taking part in a pilot program for Exceptional Family Member Program (EFMP) family members. The goal of this pilot program is to connect EFMP families with quality medical and non-medical resources to support and care for their family members. In this pilot program, EFMP family members at David Grant are being provided with ''Care Maps'' that identify resources tailored to their diagnoses. 60 MDG intends to conduct a web-based survey to solicit feedback on the efficacy and usefulness of these resources, as well as feedback from EFMP families at David Grant that have not received specialized maps to understand their experience in obtaining EFMP care without said resources. Survey results will be used as part of a larger evaluation of this pilot program, which was requested by the Director of Defense Health Affairs. Moreover, in pursuant of DoD Instruction 1315.19, ''Exceptional Family Member Program,'' there shall be monitoring and evaluation of the EFMP including ''establishing and implementing a mechanism to obtain the level of satisfaction of military families with special needs enrolled in the EFMP with the support provided.''

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matt Eliseo.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to

Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 28, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05063 Filed 3–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Developing Healthy Masculinity Social Marketing Strategies through Focus Groups and Pilot Testing; DoD-wide Data Collection and Analysis for the Department of Defense Qualitative and Quantitative Data Collection in Support of the Independent Review Commission on Sexual Assault Recommendations; OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 504.

Responses per Respondent: 1.

Annual Responses: 504.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 756.

Needs and Uses: The Independent Review Commission (IRC) on Sexual Assault in the Military recommended that the OUSD (P&R commission research on gender and masculinities to develop effective social marketing strategies to facilitate primary prevention efforts for sexual harassment and sexual assault (SASH); IRC Recommendation 2.6.d). This information collection aims to identify the most effective social marketing campaign materials and messages to promote healthy masculinities and bystander intervention as part of the Department's larger mission to reduce sexual assault and sexual harassment SASH in the military.

Affected Public: DoD Service members.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas. Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 28, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05061 Filed 3–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0106]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security, (OUSD(I&S)), Department of Defense, (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: AARO Contact Form for Authorized Reporting; OMB Control Number: 0704–0674.

Type of Request: Extension.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 208.

Needs and Uses: The All-domain Anomaly Resolution Office (*AARO*) *Contact Form for Authorized Reporting* information collection will be used to gather contact information, to include Personally Identifiable Information (PII), from members of the public. The collection is necessary to enable the AARO, Office of the Secretary of Defense, Department of Defense, to meet its statutory requirements.

The proposed information collection, *AARO Contact Form for Authorized Reporting,* enables AARO to comply with Section 1673 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), which directs AARO to establish a secure mechanism for authorized reporting of U.S. Government programs and activities related unidentified anomalous phenomena (UAP). The form will collect contact information from current and former U.S. Government employees, service members, and contractors who wish to make an authorized report to AARO. The collection is necessary to enable persons wanting to make a report to contact AARO directly.

The *AARO Contact Form for Authorized Reporting* also supports

Section 1683 of the FY23 NDAA, which directs AARO to produce a Historical Record Report (HRR) on U.S. Government activities and events related to UAP from 1945 to present. Oral history interviews, records of the National Archive, open source research, and all records and documents from U.S. Government agencies are the foundational pillars of information supporting the HRR. The *AARO Contact Form for Authorized Reporting* enables AARO to contact individuals to schedule oral history interviews.

The respondents are current and former U.S. Government employees, service members, and contractors who want to contact AARO in furtherance of providing authorized reporting regarding potential U.S. Governments activities and events related to UAP. The respondents will be asked to voluntarily provide their contact information by completing fields and using drop down menus on a page within AARO's website (*www.aaro.mil*). This form is the only collection instrument, is 100 percent electronic, and is accessible by any web browser, via both desktop and mobile device. The collection is sent to AARO once the respondent clicks the ''Submit'' button on the website. No other communications are sent to the respondents that solicit responses. The Office of the Secretary of Defense Public Affairs will notify the public when AARO's contact form is available for use.

Information, including PII, collected from the public will be processed and stored in an electronic environment accredited to handle and secure PII. AARO will then review submitted information to prioritize potential oral history interviews of persons so that they might make an authorized report. The end result of the information collection is the successful ability of individuals to contact AARO, provide a report, and contribute to the HRR, and for AARO to meet its statutory requirements.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February, 28 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05062 Filed 3–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0021]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy (DON), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (PRA).

DATES: Consideration will be given to all comments received by April 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Personal Award Recommendation Form; OMB Control Number 0703–NPAF.

Type of Request: Existing collection currently in use without an OMB Control Number.

Number of Respondents: 30.

Responses per Respondent: 1.

Annual Responses: 30.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 5.

Needs and Uses: The purpose of DON military awards is to provide deserving members of the Naval Service recognition for qualifying acts of valor or non-combat heroism, exceptionally meritorious achievement or service, and arduous or otherwise special service. Nominations for Personal Military Decorations for Service Members (active duty, retired, and veterans), Foreign Military, and Midshipmen are submitted on the OPNAV 1650/3 form. Information is collected from Active-Duty Service Members and Veterans utilizing an electronic version of the OPNAV 1650/3, ''Personal Award Recommendation.'' However, for the purposes of this PRA information collection request, this section is only concerned with information collection from members of the public (Veterans). Veterans may be required to provide information to those in a supervisory position, hereafter referred to as originators, regarding the nominee, who must provide the requested information for the subsequent review, approval, and processing of the award. Originators complete the collection instrument to the best of their ability by populating the fillable fields with the required information but may need to contact the respondents to provide their complete personal information. Originators can then return the form via email or by uploading the form into the Enterprise Task Management System 2 to Chief of Naval Operations, DNS–13, Awards Branch. DNS–13 then reviews and process the award for approval.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 28, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–05058 Filed 3–8–24; 8:45 am]

BILLING CODE 3810–FR–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: National Board for Education Sciences, Institute of Education Sciences (IES), U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the National Board for Education Sciences (hereafter referred to as NBES or Board) open virtual meeting scheduled for March 29, 2024. This notice provides information about the meeting to members of the public who may be interested in virtually attending the meeting and/or how to provide written comment(s).

ADDRESSES: The meeting will be conducted virtually via Microsoft Teams.

DATES: The NBES meeting will be held on Friday, March 29, 2024, from 10 a.m.–4 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Ellie Pelaez, DFO for NBES, U.S. Department of Education, IES: 550 12th Street SW, Office 4126–1, Washington, DC 20202, telephone: (202) 987–0359, email: *ellie.pelaez@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Board is authorized by section 116 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9516). The Board is established as part of the U.S. Department of Education, IES, and shall, consistent with 20 U.S.C. 9514, 9515(b)–(c), and 9516 function as a board of directors for IES. The mission of IES is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood through postsecondary study, in order to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about the condition and progress of education in the United States; educational practices that support learning and improve academic achievement and access to educational opportunities for all students; and the effectiveness of Federal and other education programs.

The Board's responsibilities are: (1) advise and consult with the Director of IES (Director) on the policies of IES; (2) consider and approve priorities proposed by the Director under 20 U.S.C. 9515 to guide the work of IES; (3) transmit approved priorities to the appropriate congressional committee (20 U.S.C. 9515(b)); (4) ensure that the priorities of IES and the National Education Centers are consistent with the mission of IES (20 U.S.C. 9515(c)); (5) review and approve procedures for technical and scientific peer review of the activities of IES; (6) advise the Director on the establishment of activities to be supported by IES, including the general areas of research to be carried out by the National Center for Education Research (NCER) and the National Center for Special Education Research (NCSER) (20 U.S.C. 9567); (7) present to the Director such recommendations as it may find appropriate for (a) the strengthening of education research, and (b) the funding of IES; (8) advise the Director on the funding of applications for grants, contracts, and cooperative agreements for research, after the completion of peer review; (9) review and regularly evaluate the work of IES, to ensure that scientifically valid research, development, evaluation, and statistical analysis are consistent with the standards for such activities under this title; (10) advise the Director on ensuring that activities conducted or supported by IES are objective, secular, neutral, and non-ideological, and are free of partisan political influence and racial, cultural, gender, or regional bias; (11) solicit advice and information from those in the educational field, particularly practitioners and researchers, to recommend to the Director topics that require long-term, sustained, systematic, programmatic, and integrated research efforts, including knowledge utilization and wide dissemination of research, consistent with the priorities and mission of IES; (12) advise the Director on opportunities for the participation in, and the advancement of, women, minorities, and persons with disabilities in education research, statistics, and evaluation activities of IES; (13) recommend to the Director ways to enhance strategic partnerships and collaborative efforts among other Federal and State research agencies; (14) recommend to the Director individuals to serve as Commissioners of the National Education Centers; and (15) make recommendations to the President with respect to the appointment of the Director.

Meeting Agenda: The agenda for the meeting is as follows: (1) Call to order and welcome remarks by the Chairwoman of the Board; (2) Member roll call; (3) Board member approval of meeting transcript from the January 29, 2024 meeting; (4) Board member approval of meeting agenda; (5) discussion of and voting on reports from NBES subcommittees; (6) Discussion of Senator and Ranking Member Bill Cassidy's Report to the Senate Health, Education, Labor, and Pensions Committee, with remarks from P. David Pearson (University of California Berkeley), Leslie Fenwick (Howard University), Mary Helen Immordino-Yang (University of Southern California), and Robert Jaegers (Collaborative for Academic, Social, and Emotional Learning); (7) Plan for NBES meetings in upcoming calendar year; (8) Closing remarks and adjournment.

Instructions for Accessing the Meeting: Members of the public interested in virtually attending this meeting may email the DFO listed in this notice no later than 11:59 p.m. eastern time (ET) on Tuesday, March 26, 2024. The DFO will provide a link and instructions on how to access the meeting via Microsoft Teams.

Public Comment: Members of the public interested in submitting written comments related to the work of NBES may do so by emailing their comments to the DFO listed in this notice no later than 11:59 p.m. ET on Tuesday, March 26, 2024. Written comments should pertain to the mission and function of NBES.

Reasonable Accommodations: The virtual meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than Monday, March 26, 2024.

Access to Records of the Meeting: The official transcript of this meeting will be available for public review on the IES website, *https://ies.ed.gov/director/board/index.asp,* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect NBES records at the U.S. Department of Education, IES, 550 12th Street SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5 p.m. ET. Please email *ellie.pelaez@ed.gov* to schedule an appointment.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

Authority: Section 116 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9516).

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2024–05133 Filed 3–8–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0044]

Agency Information Collection Activities; Comment Request; Application for Flexibility for Equitable Per-Pupil Funding

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 10, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0044. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melissa Siry, (202) 260–0926.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Flexibility for Equitable Per-pupil Funding.

OMB Control Number: 1810–0734.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 560.

Abstract: This is a request to extend an existing information collection for the Application for Flexibility for Equitable Per-pupil Funding, the instrument through which local educational agencies (LEAs) apply for flexibility to consolidate eligible Federal funds and State and local education funding based on weighted per-pupil allocations for low-income and otherwise disadvantaged students. This program allows LEAs to consolidate funds under the following Federal education programs: Elementary and Secondary Education Act of 1965 (ESEA); Title I, Part A Improving Basic Programs Operated by Local Educational Agencies; Title I, Part C Education of Migratory Children; Title I, Part D, Subpart 2 Local Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk; Title II Preparing, Training, and Recruiting High-quality Teachers, Principals, or Other School Leaders; Title III Language Instruction for English Learners and Immigrant Students; Title IV, Part A Student Support and Academic Enrichment Grants; Title VI, Part B Rural Education Initiative. On December 10, 2015, the programs above were reauthorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The Flexibility for Equitable Per-pupil Funding under section 1501 of the ESEA allows the U.S. Department of Education (Department) to offer an LEA the opportunity to consolidate funds under the above-listed programs to support the LEA in creating a single school funding system based on weighted per-pupil allocations for low-income and otherwise disadvantaged students, with attendant flexibility in using those funds.

Dated: March 5, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–05054 Filed 3–8–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0045]

Agency Information Collection Activities; Comment Request; College Affordability and Transparency Explanation Form (CATEF)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 10, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0045. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Wilson, (202) 987–1318.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: College Affordability and Transparency Explanation Form (CATEF).

OMB Control Number: 1840–0822.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Public sector.

Total Estimated Number of Annual Responses: 487.

Total Estimated Number of Annual Burden Hours: 1,193.

Abstract: The Office of Postsecondary Education (OPE) is seeking a renewed three-year clearance for the College Affordability and Transparency Explanation Form (CATEF) data collection. The collection of information through CATEF is required by 132 of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1015a. CATEF collects follow-up information from institutions that appear on the tuition and fees and/or net price increase College Affordability and Transparency Center (CATC) Lists for being in the five percent of institutions in their institutional sector that have the highest increases, expressed as a percentage change, over the three-year time period for which the most recent data are available. The information collected through CATEF is used to write a summary report for Congress which is also posted on the CATC website (accessible through the College Navigator). The Department will continue to use two CATEF forms: (1) Net Price and (2) Tuition and Fees.

Dated: March 5, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–05055 Filed 3–8–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–55–000.

Applicants: EAM Nelson Holding, LLC, Entergy Power, LLC, EWO Marketing, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of EAM Nelson Holding, LLC, et al.

Filed Date: 2/28/24.

Accession Number: 20240228–5276.

Comment Date: 5 p.m. ET 3/20/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1391–000.

Applicants: Arizona Public Service Company.

Description: Baseline eTariff Filing: Reserve Energy Master Tariff to be effective 5/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5293.

Comment Date: 5 p.m. ET 3/22/24.

Docket Numbers: ER24–1392–000.

Applicants: Black Mesa Interconnection, LLC.

Description: Request for Waiver of Black Mesa Interconnection, LLC.

Filed Date: 2/29/24.

Accession Number: 20240229–5348.

Comment Date: 5 p.m. ET 3/21/24.

Docket Numbers: ER24–1393–000.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: PNM Compliance Filing with Order No. 2023 to be effective 3/2/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5337.

Comment Date: 5 p.m. ET 3/22/24.

Docket Numbers: ER24–1394–000.

Applicants: DCR Transmission, L.L.C.

Description: 205(d) Rate Filing: DCR Transmission Request to Extend Effective Date Filing to be effective 3/8/2024.

Filed Date: 3/4/24.

Accession Number: 20240304–5001.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1395–000.
Applicants: California Independent System Operator Corporation.
Description: 205(d) Rate Filing: 2024–03–01 Planning Coordinator Agmt Amendmts—CEII & Privileged Treatment Req to be effective 3/5/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5003.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1396–000.
Applicants: Massachusetts Electric Company.
Description: 205(d) Rate Filing: 2023 Rate Update Filing for Massachusetts Electric Borderline Sales Agreement to be effective 1/1/2023.
Filed Date: 3/4/24.
Accession Number: 20240304–5011.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1398–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 1067R13 East Texas Electric Cooperative NITSA and NOA to be effective 2/1/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5089.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1399–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits Request for Waiver of certain sections of the Large Generator Interconnection Procedures to its Open Access Transmission Tariff to allow for the implementation of the October 2, 2023, Order.
Filed Date: 2/29/24.
Accession Number: 20240229–5349.
Comment Date: 5 p.m. ET 3/11/24.

Docket Numbers: ER24–1401–000.
Applicants: MATL LLP.
Description: 205(d) Rate Filing: 50 MW TSR with Macquarie Filing to be effective 5/4/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5112.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1403–000.
Applicants: Arizona Public Service Company.
Description: 205(d) Rate Filing: Market-Based Rate Tariff Revision to be effective 5/4/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5153.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1404–000.
Applicants: MPower Energy NJ LLC.
Description: Baseline eTariff Filing: MPE_NJ_FERC_Application to be effective 4/3/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5154.
Comment Date: 5 p.m. ET 3/25/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–24–000.

Applicants: Jersey Central Power & Light Company.

Description: Supplement to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Jersey Central Power & Light Company.

Filed Date: 3/4/24.

Accession Number: 20240304–5178.

Comment Date: 5 p.m. ET 3/14/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05023 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–521–001]

Gulf LNG Liquefaction Company, LLC; Notice of Request for Extension of Time

Take notice that on February 22, 2024, Gulf LNG Liquefaction Company, LLC (GLLC); Gulf LNG Energy, LLC (GLE); and Gulf LNG Pipeline, LLC (collectively, the Applicants) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until July 16, 2029, to construct and place into service its Export Terminal Facilities Project (Project) located in Jackson County, Mississippi as authorized in the Order Granting Authorization under section 3 of the Natural Gas Act (Order).[1] The Order required the Applicants to complete construction of the Project and make it available for service within five years of the date of the Order, or by July 16, 2024.

The Applicants state that global events, including the COVID–19 pandemic, made construction of large-scale infrastructure projects and execution of international commercial agreements challenging. In addition, GLE asserts that it has been in complex litigation with its existing import customers over the scope and status of their terminal use agreements, which has hampered GLLC's ability to execute off-take contracts.

GLLC states that it has been actively progressing the Project and obtained nearly all required Federal, State, and local authorizations and permits related to the construction and operation of the Project. GLLC asserts that these authorizations and permits have been maintained, remain valid, and remain in full force and effect. GLLC states that the remaining required permits may be obtained once consultations with the respective agencies are renewed.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the Applicants' request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

[1] Gulf LNG Liquefaction Company, LLC, et al., 168 FERC ¶ 61,020 (2019).

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY (202) 502–8659.

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[4] *Id.* at P 40.

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

The Commission strongly encourages electronic filings of comments in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Comment Date: 5 p.m. eastern time on March 19, 2024.

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05021 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11530–032]

Mitchell County Conservation Board; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of Reservoir Elevation Requirements.

b. *Project No:* 11530–032.

c. *Date Filed:* October 17, 2023, and supplemented on November 3, 2023, and January 30, 2024.

d. *Applicant:* Mitchell County Conservation Board.

e. *Name of Project:* Mitchell Mill Dam Hydroelectric Project.

f. *Location:* The project is located on the Cedar River, in Mitchell County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mike Miner, Executive Director, Mitchell County Conservation Board, (319) 239–3965, *mminer@mitchellcoia.us.*

i. *FERC Contact:* Aneela Mousam, (202) 502–8357, *aneela.mousam@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item m below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* April 04, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–11530–032. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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.

l. *Description of Request:* Mitchell County Conservation Board (applicant) requests Commission approval for a temporary variance of reservoir elevation requirements to conduct concrete repair work identified during a dam safety inspection. The applicant requests to draw down the reservoir by 10.5 feet to an elevation of 1,020.0 feet mean sea level at the top of the radial gate sill. The applicant anticipates that the drawdown, repairs and refill would take approximately 60 days. The applicant would lower the reservoir at a rate not to exceed 1 foot per day to ensure that fish, mussels, and other aquatic species have an opportunity to migrate as the water levels recede. The applicant would maintain the spill minimum flow (25 cubic feet per second) via the radial gates during the temporary variance. The applicant proposes to use existing gravel-covered areas for laydown and storage, and no ground disturbance, vegetation clearing or tree cutting would occur during construction. The applicant requests that the temporary variance be effective from September 15, 2024 to December 15, 2024.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* 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, .214, respectively. 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.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (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 commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor 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 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05119 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1376–000]

Yuma Solar Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Yuma Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05121 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–9–000]

Commission Information Collection Activities (FERC–567); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–567, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams (OMB Control Number 1902–0005).

DATES: Comments on the collections of information are due [INSERT DATE 60 days after date of publication in the **Federal Register**].

ADDRESSES: You may submit your comments (identified by Docket No. IC24–9–000 and FERC–567) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–567, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams.

OMB Control No.: 1902–0005.

Type of Request: Three-year extension of the FERC–567 information collection requirements with no changes to the current reporting requirements.

Abstract: Per 18 CFR 260.8(a), each major interstate natural gas company with a system delivery capacity exceeding 100,000 Mcf[1] per day is required to submit, by June 1 of each year, diagrams reflecting operating conditions on the pipeline's main transmission system during the previous 12 months ending on December 31. The submitted information must include (i) configuration and location of installed pipeline facilities; (ii) receipt and delivery points between shippers, and pipeline companies; (iii) location of compressor stations on a pipeline system; (iv) pipeline diameters; (v) maximum allowable operating pressures; (vi) suction and discharge pressures at compressor stations; (vii) installed horsepower and volumes compressed at each compressor station; (viii) existing shippers currently nominating service under firm contracts on each pipeline company; and (ix) peak capacity on the system. The information is collected so that it is available in the event the Commission needs to confirm pipeline facility data.

Type of Respondents: Natural gas pipeline companies with a system delivery capacity in excess of 100,000 Mcf per day.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden[2] and cost[3] for the information collection as follows.

FERC–567—GAS PIPELINE CERTIFICATES: ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS

Respondents	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Natural Gas Pipelines	124	1	124	4 hrs.; $400	496 hrs.; $49,600	$400

Comments: Comments are invited on: (1) whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05013 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

[1] Mcf is a unit of measurement for natural gas that equals, 000 cubic feet.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collections burden, reference 5 CFR 1320.3.

[3] The Commission staff estimates that the average respondent for FERC–567 is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's current annual average of $207,786 (for salary plus benefits), the average hourly cost is $100/hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1375–000]

Superstition Energy Storage LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Superstition Energy Storage LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05017 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1404–000]

MPower Energy NJ LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MPower Energy NJ LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to: Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05116 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9972–000]

Notice of Filing; Hernandez, Carlos M.

Take notice that on March 4, 2024, Carlos M. Hernandez submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on March 25, 2024.

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05117 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1386–000]

Bartonsville Energy Facility, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Bartonsville Energy Facility, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05015 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1390–000]

Five Elements Energy II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Five Elements Energy II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05014 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1382–000]

Horus Louisiana 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Horus Louisiana 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05016 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–497–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: SNG Fuel Retention Rates—Summer 2024 to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5192.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–498–000.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing: Golden Pass Pipeline LLC Operational Purchases and Sales Report to be effective N/A.

Filed Date: 3/1/24.

Accession Number: 20240301–5212.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–499–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: 4(d) Rate Filing: Annual Electric Power Tracker Filing Effective April 1 2024 to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5227.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–500–000.

Applicants: LA Storage, LLC.

Description: 4(d) Rate Filing: LA Storage 2024 Annual Adjustment of Fuel Retainage Percenta to be effective 3/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5248.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–501–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Compliance filing: Ozark Gas Transmission NCA Filing to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5251.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–502–000.

Applicants: Golden Triangle Storage, LLC.

Description: 4(d) Rate Filing: Normal filing Part 8 changes 2024 to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5254.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–503–000.

Applicants: ANR Pipeline Company.

Description: 4(d) Rate Filing: ANR 2024 Fuel and EPC Filing to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5286.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–504–000.

Applicants: Northern Border Pipeline Company.

Description: 4(d) Rate Filing: T–1 & T–1B Fuel and Electric Surcharge to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5297.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–505–000.

Applicants: Golden Pass Pipeline LLC.

Description: Compliance filing: Golden Pass Pipeline LLC Annual Retainage Report 2024 to be effective 3/1/2024.

Filed Date: 3/1/24.

*Accession Number:*20240301–5318.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–506–000.

Applicants: Adelphia Gateway, LLC.

Description: Compliance filing: Adelphia Gateway SBA Filing to be effective N/A.

Filed Date: 3/1/24.

Accession Number: 20240301–5329.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–507–000.

Applicants: Dauphin Island Gathering Partners.

Description: 4(d) Rate Filing: Storm Surcharge 2024 to be effective 4/1/2024.

Filed Date: 3/1/24.

Accession Number: 20240301–5334.

Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: RP24–508–000.

Applicants: Rover Pipeline LLC.

Description: 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 3–4–2024 to be effective 3/1/2024.

Filed Date: 3/4/24.

Accession Number: 20240304–5091.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: RP24–509–000.

Applicants: Dauphin Island Gathering Partners.

Description: 4(d) Rate Filing: Chevron—Negotiated rate amendment—March 2024 to be effective 3/1/2024.

Filed Date: 3/4/24.

Accession Number: 20240304–5118.

Comment Date: 5 p.m. ET 3/18/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–327–001.

Applicants: Alliance Pipeline L.P.

Description: Compliance filing: Award of Capacity Compliance Filing—Docket RP24–327 to be effective 2/16/2024.

Filed Date: 3/4/24.

Accession Number: 20240304–5107.

Comment Date: 5 p.m. ET 3/18/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05022 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–64–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on February 21, 2024, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and WBI Energy's blanket certificate issued in Docket No. CP82–487–000, for authorization to abandon by sale to Montana-Dakota Utilities Co. (Montana-Dakota) approximately 1.25 miles of 8- and 12-inch natural gas mainline and certain town border station equipment and land on its Line Section 23 located in Sheridan County, Wyoming. The estimated cost for the project is approximately $3,900,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, by phone at (701) 530–1563, or by email at *lori.myerchin@wbienergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. Eastern Time on May 3, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is May 3, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is May 3, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 3, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–64–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–64–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503 or at *lori.myerchin@wbienergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05020 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1374–000]

Sierra Estrella Energy Storage LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sierra Estrella Energy Storage LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05018 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–52–000.

Applicants: Midway-Sunset Cogeneration Company.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Midway-Sunset Cogeneration Company.

Filed Date: 2/27/24.

Accession Number: 20240227–5228.

Comment Date: 5 p.m. ET 4/12/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2688–001.
Applicants: NRG Business Marketing LLC.
Description: Compliance filing: Rev. Tariff, Req. for Consolidation Shortened Notice Period Expedited Treatment to be effective 8/1/2023.
Filed Date: 3/4/24.
Accession Number: 20240304–5189.
Comment Date: 5 p.m. ET 3/11/24.

Docket Numbers: ER24–816–001.
Applicants: Puget Sound Energy, Inc.
Description: Tariff Amendment: Amendment of January 4, 2024 Boeing filing to be effective 1/1/2024.
Filed Date: 3/5/24.
Accession Number: 20240305–5152.
Comment Date: 5 p.m. ET 3/26/24.

Docket Numbers: ER24–966–000.
Applicants: Eleven Mile Solar Center, LLC.
Description: Supplement to January 22, 2024 Eleven Mile Solar Center, LLC tariff filing.
Filed Date: 2/29/24.
Accession Number: 20240229–5347.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1333–000; TS24–2–000.
Applicants: Western Interconnect LLC, Western Interconnect LLC.
Description: Western Interconnect LLC submits Request for Waiver of Standards of Conduct Requirements.
Filed Date: 2/26/24.
Accession Number: 20240226–5281.
Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1402–000.
Applicants: Crooked Lake Solar, LLC.
Description: Petition for Limited Waiver of Crooked Lake Solar, LLC.
Filed Date: 3/1/24.
Accession Number: 20240301–5410.
Comment Date: 5 p.m. ET 3/22/24.

Docket Numbers: ER24–1405–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4058R1 Missouri Electric Commission NITSA NOA to be effective 2/1/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5173.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1406–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 6665; AG1–507 to be effective 5/6/2024.
Filed Date: 3/4/24.
Accession Number: 20240304–5185.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1407–000.
Applicants: Canal Energy Marketing LLC.
Description: Canal Energy Marketing LLC Request for a limited one-time waiver of the ISO New England, Inc. Inventoried Energy Program contained in Appendix K of ISO–NE's Transmission, Markets & Services Tariff.
Filed Date: 3/4/24.
Accession Number: 20240304–5219.
Comment Date: 5 p.m. ET 3/25/24.

Docket Numbers: ER24–1408–000.
Applicants: Cleco Power LLC.
Description: § 205(d) Rate Filing: Revised Rate Schedule 11 and Request for Waiver to be effective 5/1/2024.
Filed Date: 3/5/24.
Accession Number: 20240305–5050.
Comment Date: 5 p.m. ET 3/26/24.

Docket Numbers: ER24–1410–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LA, PG&E Midway, BAC011, SA No. 533 to be effective 3/6/2024.
Filed Date: 3/5/24.
Accession Number: 20240305–5085.
Comment Date: 5 p.m. ET 3/26/24.

Docket Numbers: ER24–1411–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Compliance filing: Alabama Power Company submits tariff filing per 35: Order No. 2023 Compliance Filing to be effective 12/31/9998.
Filed Date: 3/5/24.
Accession Number: 20240305–5111.
Comment Date: 5 p.m. ET 3/26/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05120 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–13–000]

Commission Information Collection Activities (FERC–716); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–716, Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities, OMB Control Number 1902–0170.

DATES: Comments on the collections of information are due [INSERT DATE 60 days after date of publication in the **Federal Register**].

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24–13–000 and FERC–0170) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by other delivery services:

○ *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *All other delivery services:* Federal Energy Regulatory Commission,

Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–716, Good Faith Requests for Transmission Service and Good Faith Responses by Transmitting Utilities.

OMB Control No.: 1902–0170.

Type of Request: Three-year extension of the FERC–716 information collection requirements with no changes to the current reporting requirements.

Abstract: This information collection pertains to negotiations between a generator of electricity and a transmitting utility under sections 211 through section 213 [1] of the Federal Power Act (FPA).

Section 211 of the FPA authorizes any electric utility, Federal power marketing agency, or any other person generating electric energy for sale or resale to apply to the Commission for an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. The Commission may issue such order if it finds that such an order meets the requirements of section 212,[2] and would otherwise be in the public interest.

Section 213 provides that whenever an application for such an order constitutes a ''good faith request'' for service, the transmitting utility must provide the applicant with a ''detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.''

The Commission's regulation at 18 CFR 2.20 identifies 12 components of a good faith request for transmission and 5 components of a reply to a good faith request. The regulation at 18 CFR 2.20(a)(2) provides that the Commission may issue an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) only if: (1) an applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order, and (2) the applicant has, pursuant to section 213(a) of the FPA, made a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions.

Type of Respondents: Transmission Requestors and Transmitting Utilities.

Estimate of Annual Burden: The Commission estimates the average annual burden [3] and cost [4] for this information collection as follows.

Types of responses	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hrs. & cost ($) per response (4)	Total annual burden hrs. & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Information exchange between parties.	6	1	6	100 hrs.; $10,000	600 hrs.; $60,000	$10,000
Application submitted to FERC if parties' negotiations are unsuccessful.	6	1	6	2.5 hrs.; $250.00	15 hrs.; $1,500	250
Totals	.....	.....	.....	.....	615 hrs.; $61,500	.....

Comments: Comments are invited on: (1) whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05125 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1366–000]

Tumbleweed Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tumbleweed Energy, LLC's application for market-based rate authority, with an

[1] 16 U.S.C. 824j, 824k, and 824*l.*

[2] Section 212 requires that, subject to appropriate terms and conditions and just and reasonable rates, access to the electric transmission system for the purposes of wholesale transactions is made widely available.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collections burden, reference 5 CFR 1320.3.

[4] The Commission staff estimates that the average respondent for FERC–576 is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's current annual average of $207,786 (for salary plus benefits), the average hourly cost is $100/hour.

accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05124 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–113]

Georgia Power Company; Notice of Application for Non-Capacity Amendment of License Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity Amendment of License.

b. *Project No:* 2177–113.

c. *Date Filed:* September 29, 2023, and supplemented October 19, 2023, and February 21, 2024.

d. *Applicant:* Georgia Power Company (licensee).

e. *Name of Project:* Middle Chattahoochee Project.

f. *Location:* The project is located on the Chattahoochee River in Harris and Muscogee counties, Georgia, and Lee and Russell counties, Alabama. The project does not occupy federally owned lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Courtenay O'Mara, 241 Ralph McGill Boulevard NE, BIN 10193, Atlanta, Georgia 30308–3374, 404–506–7219, *cromara@southernco.com.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Water Quality Certification:* 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.''

l. *Deadline for filing comments, motions to intervene, and protests:* April 4, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2177–113. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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.

m. *Description of Request:* The licensee proposes to upgrade the four

generating units at the Oliver Development, which includes replacing the turbine runners on all units and replacing generators for Units 3 and 4. The upgrades would result in a 0.1 megawatt increase in the authorized installed capacity and a 937 cubic feet per second increase in the hydraulic capacity. The upgrade is scheduled to begin in 2025, with a unit upgrade starting at the beginning of each year in 2025, 2026, 2027, and 2028, pending approval of the amendment application. The applicant states that the proposal does not change any of the project features or operations. The project will continue to operate under the terms of its current license and applicable Water Quality Certification. All work would be performed inside the powerhouse, there would be no ground disturbance, and work areas associated with the proposed action are located on previously disturbed land.

n. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *Comments, Protests, or Motions to Intervene:* 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, .214, respectively. 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.

q. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (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 commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor 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 385.2010.

r. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05118 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

	Docket Nos.
Carpenter Wind Farm LLC	EG24–51–000
Cattlemen Solar Park II LLC	EG24–52–000
Crooked Lake Solar II LLC	EG24–53–000
MS Solar 5, LLC	EG24–54–000
Moonshot Solar LLC	EG24–55–000
PGR 2022 Lessee 5, LLC	EG24–56–000
Ashtrom Renewable Energy LLC	EG24–57–000
Castanea Project, LLC	EG24–58–000
Yellow Pine Solar II, LLC	EG24–59–000
San Juan Solar 1, LLC	EG24–60–000
SJS 1 Storage, LLC	EG24–61–000
Town Hill Energy Storage 1 LLC	EG24–62–000
Escalante Solar, LLC	EG24–63–000
Parc Eolien De Fresnes en saulnois SAS.	FC24–2–000

Take notice that during the month of February 2024, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2023).

Dated: March 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05019 Filed 3–8–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11768–01–ORD]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Application for Reference and Equivalent Method Determination (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of collection request and application for reference and equivalent method determination.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), Application for Reference and Equivalent Method Determination'' (EPA ICR No. 0559.15, OMB Control No. 2080–0005) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through December 31, 2024. This notice allow for 60 days for public comments.

DATES: Comments must be submitted on or before May 10, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2005–0530, online using *www.regulations.gov* (our preferred method), by email to *ord-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 919–541–7877; email address: *Vanderpool.Robert@epa.gov*.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through December 31, 2024. 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.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: To determine compliance with the NAAQS, State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

Form Numbers: None.

Respondents/affected entities: Private manufacturers, states Respondent's obligation to respond Required to obtain the benefit of EPA designation under 40 CFR part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR part 53.15 and all applicable provisions of 40 CFR part 2.

Estimated Number of Respondents: 22 (total).

Frequency of Response: Annual.

Total Estimated Burden: 7,492 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $846,764 (per year), includes $172,692 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Alice Gilliland,

Acting Director, Center for Environmental Measurements and Modeling.

[FR Doc. 2024–05080 Filed 3–8–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2024–0063; FRL–11805–01–OW]

Proposed Information Collection Request; Comment Request; Clean Watersheds Needs Survey (CWNS) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Clean Watersheds Needs Survey (CWNS) (Renewal)'' (EPA ICR No. 0318.14, OMB Control No. 2040–0050) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a renewal of the ICR. 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.

DATES: Comments must be submitted on or before May 10, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2024–0063, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Elisabeth Schlaudt, Office of Water, State Revolving Fund Branch, (4204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–8934; email address: *cwns@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301

Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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 EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Watersheds Needs Survey (CWNS) is required by Clean Water Act (CWA) Sections 205(a) and 516. It is a periodic inventory of existing and planned publicly owned wastewater conveyance and treatment facilities, combined sewer overflow correction, stormwater management and other water pollution control facilities in the United States, as well as an estimate of how many of these facilities need to be built. The CWNS is a joint effort between the EPA and the states. The CWNS collects cost and technical data from states that is associated with publicly owned treatment works (POTWs) and other water pollution control facilities, existing and planned. The respondents who provide this information to the EPA are state agencies responsible for environmental pollution control and local facility contacts who provide documentation to the states. Periodically, the states request data or documentation from contacts at the facility or local government level. These respondents are referred to as facilities.

No confidential information is used, nor is sensitive information protected from release under the Public Information Act. The EPA achieves national consistency in the final results through the application of uniform guidelines and validation techniques.

Form numbers: None.

Respondents/affected entities: States, Territories, and Local Facilities.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56 States and Territories, 10,294 Local Facilities (total).

Frequency of response: Every 4 years.

Total estimated burden: 41,899 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,509,754 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 32,254 hours and $2,004,750 in the total estimated respondent burden compared with the ICR previously approved by OMB. This adjustment is based upon an increase in facility universe, additional burden associated with gathering small community needs, as well as an adjustment in labor rates and benefits.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2024–05049 Filed 3–8–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11776–01–OW]

Environmental Financial Advisory Board Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Charter for the U.S. Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of the EFAB is to provide advice and recommendations to the EPA Administrator on issues associated with environmental financing. It is determined that the EFAB is in the public interest in connection with the performance of duties imposed on the agency by law.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Tara Johnson, Water Infrastructure and Resiliency Finance Center, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460 (Mail Code: 4204M), Telephone (202) 564–6186, or *johnson.tara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2, to provide advice and recommendations to the EPA on innovative approaches to financing environmental programs, projects, and activities.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2024–05047 Filed 3–8–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2024–0080; FRL–11772–01–OLEM]

The Hazardous Waste Electronic Manifest System Advisory Board: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites the public to nominate experts to be considered for a three-year appointment to the Hazardous Waste Electronic Manifest System Advisory Board (the ''Board''). Pursuant to the Hazardous Waste Electronic Manifest Establishment Act (the ''e-Manifest Act'' or the ''Act''), EPA has established the Board to provide practical and independent advice, consultation, and recommendations to the EPA Administrator on the activities, functions, policies, and regulations associated with the Hazardous Waste Electronic Manifest (e-Manifest) System. In accordance with the e-Manifest Act, the EPA Administrator or designee will serve as Chair of the Board. This notice solicits nominations for possible consideration of candidates to potentially fill a vacancy on the Board to serve as an information technology (IT) expert for a three-year appointment. EPA may also consider nominations received through this solicitation to fill any unanticipated future vacancies on the Board for the following positions including an industry representative member with experience in using or representing users of the manifest system; and a state representative member responsible for processing manifests.

DATES: Nominations of candidates considered for appointment must be received on or before April 10, 2024.

ADDRESSES: Submit your nominations identified with ''BOARD NOMINATION'' in the subject line to Fred Jenkins, the Designated Federal Officer (DFO) of the e-Manifest Advisory Board at *jenkins.fred@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Designated Federal Officer (DFO), Phone: 202–566–0344; or by email: *Jenkins.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2018, EPA established a national system for tracking hazardous waste shipments electronically. This system, known as ''e-Manifest,'' supports the modernization of the nation's cradle-to-grave hazardous waste tracking process while saving valuable time, resources, and dollars for industry and states.

EPA established the e-Manifest system according to the Hazardous Waste Electronic Manifest Establishment Act, enacted into law on October 5, 2012. The ''e-Manifest Act'' authorizes the EPA to implement a national electronic manifest system and requires that the costs of developing and operating the new e-Manifest system be recovered from user fees charged to those who use hazardous waste manifests to track off-site shipments of their wastes.

This system enables users of the uniform hazardous waste manifest forms (EPA Form 8700–22 and Continuation Sheet 8700–22A) to have the option to more efficiently track their hazardous waste shipments electronically, in lieu of the paper manifest, from the point of generation, during transportation, and to the point of receipt by an off-site facility that is permitted to treat, store, recycle, or dispose of the hazardous waste. Electronic manifests obtained from the national system augment or replace the paper forms that have historically been used for this purpose, and that result in substantial paperwork costs and other inefficiencies. Congress intended that EPA develop a system that, among other things, meets the needs of the user community and decreases the administrative burden associated with the current paper-based manifest system on the user community. By enabling the transition from a paper-intensive process to an electronic system, EPA estimates e-Manifest will ultimately save state and industry users more than $50 million annually, once electronic manifests are widely adopted. The system also serves as a national reporting hub and database for all manifests and shipment data. To ensure that these goals are met, the Act directs EPA to establish a Board to assess the effectiveness of the electronic manifest system and make recommendations to the Administrator for improving the system.

In addition, the e-Manifest Act directs EPA to develop a system that attracts sufficient user participation and service revenues to ensure the viability of the system. As a result, the Act provides EPA broad discretion to establish reasonable user fees, as the Administrator determines are necessary, to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system.

e-Manifest aligns with the Agency's E-Enterprise business strategy. E-Enterprise for the Environment is a transformative 21st century strategy—jointly governed by states and EPA—for modernizing government agencies' delivery of environmental protection. Under this strategy, the Agency will streamline its business processes and systems to reduce reporting burden on states and regulated facilities and improve the effectiveness and efficiency of regulatory programs for EPA, states, and tribes.

EPA has established the Board in accordance with the provisions of the e-Manifest Act and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Board is in the public interest and supports EPA in performing its duties and responsibilities. Pursuant to the e-Manifest Act the Board is comprised of nine members, of which one member is the Administrator (or a designee), who will serve as Chair of the Board, and eight members are individuals appointed by the EPA Administrator:

- At least two of whom have expertise in information technology (IT);
- At least three of whom have experience in using, or represent users of, the manifest system to track the transportation of hazardous waste under federal and state manifest programs; and
- At least three state representatives responsible for processing those manifests.

Pursuant to the e-Manifest Act, the Board will meet publicly at least annually to provide EPA recommendations on matters related to the operational activities, functions, policies, and/or regulations of the EPA under the e-Manifest Act.

II. Nominations

Any interested person and/or organization may nominate qualified individuals for membership. EPA values and welcomes diversity. To obtain nominations of diverse candidates, the agency encourages nominations of all genders and all racial and ethnic groups. All nominations will be considered; however, applicants need to be aware of the representation from specific sectors required by the e-Manifest Act.

Nominees who represent states and industry should have a comprehensive knowledge of hazardous waste generation, transportation, treatment, storage, and disposal under RCRA Subtitle C at the federal, state, and local levels. Nominees who represent states should have comprehensive knowledge of state programs that use manifest data. Nominees who represent industry should be familiar with e-Manifest and have strong knowledge of existing industry systems/devices/approaches and business operations to provide valuable input on e-Manifest integration into current industry data systems.

IT nominees should have core competencies and experience in large-scale systems and application development, integration, and implementation. This may include competency and experience with: managing complex systems used by multiple user communities; ensuring data availability, integrity, and quality; user help desk and support; as well as expertise relevant to the complexities of an electronic manifest system. Examples of this expertise may include, but are not limited to: Expertise with web-based and mobile technologies, particularly those that support large scale operations for geographically diverse users; expertise in IT security, including perspective on federal IT security requirements; expertise in electronic signature and user management approaches; expertise with scalable hosting solutions such as cloud-based hosting; and expertise in user experience. Existing knowledge of, or willingness to gain an understanding of, EPA shared services and enterprise architecture is a plus.

Another plus for any nominee is experience in setting and/or managing fee-based systems in general.

Additional criteria used to evaluate nominees will include:

- Excellent interpersonal, oral, and written communication skills;
- Demonstrated experience developing group recommendations;
- Willingness to commit time to the Board and demonstrated ability to work constructively on committees;

• Absence of financial conflicts of interest;

• Impartiality (including avoiding the appearance of a loss of impartiality); and

• Background and experiences that would help contribute to the diversity of perspectives on the Board, *e.g.,* geographic, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations.

Nominations must include a resume, which provides the nominee's background, experience, and educational qualifications, as well as a brief statement (one page or less) describing the nominee's interest in serving on the Board and addressing the other criteria previously described. Nominees are encouraged to provide any additional information that they feel would be useful for consideration, such as: availability to participate as a member of the Board; how the nominee's background, skills, and experience would contribute to the diversity of the Board; and any concerns the nominee has regarding membership. Nominees should be identified by name, occupation, position, current business address, email, and telephone number.

Interested candidates may self-nominate. The agency will acknowledge receipt of nominations. Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings in person. Additionally, candidates selected to serve as IT ''Expert'' Members will be designated as Special Government Employees (SGEs) or consultants. Candidates designated as SGEs will be required to fill out the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3310–48). This confidential form provides information to the EPA ethics officials to determine whether there is a conflict between the SGE's public duties and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations. One example of a potential conflict of interest may be for IT professional(s) serving in an organization which is awarded any related e-Manifest system development contract(s).

Authority: 5 U.S.C. App.2.

Dated: February 28, 2024.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2024–05073 Filed 3–8–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0097; –0115]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0097 and –0115).

DATES: Comments must be submitted on or before May 10, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*

• *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.

• *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, 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 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* Interagency Notice of Change in Director or Executive Officer.

OMB Number: 3064–0097.

Forms: 6822/02.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0097]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Interagency Notice of Change in Director or Executive Officer, 12 USC 1831i (Mandatory).	Reporting (On Occasion)	23	2.7	02:00	124
Total Annual Burden (Hours)					124

Source: FDIC.

General Description of Collection: Section 32 of the FDIA (12 U.S.C. 1831i) requires an insured depository institution or depository institution holding company under certain circumstances to notify the appropriate federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution at least 30 days before such addition or employment becomes effective. Section 32 of the FDIA also provides that the FDIC may disapprove an individual's service as a director or senior executive officer of certain state nonmember banks or state savings associations if, upon assessing

the individual's competence, experience, character, and integrity, it is determined that the individual's service would not be in the best interest of the depositors of the institution or the public. The Interagency Notice of Change in Director or Senior Executive Officer, with the information contained in the Interagency Biographical and Financial Report (described above) as an attachment, is used by the FDIC to collect information relevant to assess the individual's competence, experience, character, and integrity. There is no change in the methodology or substance of this information collection. The reduction in estimated annual burden (from 214 hours in 2021 to 124 hours currently) is due to the decrease in the estimated number of annual responses.

2. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0115]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Prompt Corrective Action, 12 USC 1831o (Voluntary).	Reporting (Annual)	4	4	04:00	64
Total Annual Burden (Hours)					64

Source: FDIC.

General Description of Collection: The Prompt Corrective Action (PCA) provisions of section 38 of the Federal Deposit Insurance Act requires or permits the FDIC and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within certain capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized. Various provisions of the statute and the FDIC's implementing regulations require the prior approval of the FDIC before an FDIC-supervised institution, or certain insured depository institutions, can engage in certain activities, or allow the FDIC to make exceptions to restrictions that would otherwise be imposed. This collection of information consists of the applications that are required to obtain the FDIC's prior approval to engage in these activities. There is no change in the methodology or substance of this information collection. The estimated burden remains unchanged from 2021.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the 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 the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 6, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–05115 Filed 3–8–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, March 14, 2024, at 10 a.m.

PLACE: Hybrid meeting: 1050 First Street, NE Washington, DC (12th floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 hospital admission level in Washington, DC, will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2024–01: Texas Majority PAC

REG 2024–03 (Commission Zip Codes)—Draft **Federal Register** Notice

LRF 1455: Statement of Policy on Commission Action in Enforcement Process

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or *secretary@fec.gov,* at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–05246 Filed 3–7–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 89 FR 12838.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., March 12, 2024.

CHANGES IN THE MEETING: This meeting is cancelled and will be rescheduled.

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD, Relay/1–800–877–8339 for toll free.

Dated: March 6, 2024.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2024–05165 Filed 3–7–24; 11:15 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 March 26, 2024.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Jeffry Albers, Wisner, Nebraska;* to retain voting shares of Citizens National Corporation, and thereby indirectly retain voting shares of Citizens State Bank, both of Wisner, Nebraska.

2. *Amy Skovsende, Omaha, Nebraska; Kayla Roth Kuxhausen, West Point, Nebraska; Traci Ebel, Wisner, Nebraska; and Tyler Roth, Bucyrus, Kansas;* to become members of the Roth family control group, a group acting in concert, to retain voting shares of Citizens National Corporation, and thereby indirectly retain voting shares of Citizens State Bank, both of Wisner, Nebraska.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–05122 Filed 3–8–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064; Docket No. 2024–0053; Sequence No. 1]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 36 construction contract requirements.

DATES: Submit comments on or before April 10, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. This review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000–0064 and combines it with the previously approved information collection under OMB Control No. 9000–0062, with the new title ''Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements''. Upon approval of this consolidated information collection, OMB Control No. 9000–0062 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0064.

This clearance covers the information that contractors must submit to comply with the following FAR requirements:

- FAR 52.236–5, Material and Workmanship. This clause requires contractors to obtain contracting officer approval of the machinery, equipment, material, or articles to be incorporated into the work. The contractor's request must include: the manufacturer's name, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment; and full information concerning the material or articles. When directed by the contracting officer, the contractor must submit samples of the items requiring approval for incorporating into the work. The contracting officer uses this information to determine whether the machinery, equipment, material, or articles meet the standards of quality specified in the contract. A contracting officer may reject work, if the contractor installs machinery, equipment, material, or articles in the work without obtaining the contracting officer's approval.
- FAR 52.236–13, Accident Prevention, Alternate I. This alternate to the basic clause requires contractors to submit a written proposed plan to provide and maintain work environments and procedures that will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract. The plan must include an analysis of the significant hazards to life, limb, and property inherent in

contract work performance and a plan for controlling these hazards. The contracting officer and technical representatives analyze the Accident Prevention Plan to determine if the proposed plan will satisfy the safety requirements identified in the contract, to include certain provisions of the Occupational Safety and Health Act (per FAR 36.513(c)) and applicable standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910.

- FAR 52.236–15, Schedules for Construction Contracts. This clause requires contractors to prepare and submit to the contracting officer for approval three copies of a practicable schedule showing the order in which the contractor proposes to perform the work, and the dates on which the contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The contracting officer uses this information to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.
- FAR 52.236–19, Organization and Direction of the Work. This clause requires contractors, under cost-reimbursement construction contracts, to submit to the contracting officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The contractor must keep the data furnished current by supplementing it as additional information becomes available. The contracting officer uses this information to ensure the work is performed by qualified personnel at a reasonable cost to the Government.

C. Annual Burden

Respondents: 3,771.

Total Annual Responses: 13,267.

Total Burden Hours: 21,338.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 89 FR 786, on January 5, 2024. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov*. Please cite OMB Control No. 9000–0064, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–05107 Filed 3–8–24; 8:45 am]

BILLING CODE 6820–EP–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of a modified system of records.

SUMMARY: OGE proposes to revise an existing Governmentwide system of records under the Privacy Act, covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

DATES: This action will be effective without further notice on March 11, 2024 subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by April 10, 2024.

ADDRESSES: Comments may be submitted to OGE by any of the following methods:

Email: usoge@oge.gov (Include reference to ''OGE/GOVT–1'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 750, 250 E Street SW, Washington, DC 20024, Attention: Jennifer Matis, Associate Counsel.

Instructions: Comments may be posted on OGE's website, *www.oge.gov*. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information before posting.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; Email: *jmatis@oge.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that OGE is proposing to revise the OGE/GOVT–1 Governmentwide system of records to add a routine use to permit OGE to post on its website information regarding individuals who have filed a public financial disclosure report pursuant to 5 U.S.C. 13103 and individuals who have received a conflict of interest waiver pursuant to 18 U.S.C. 208 (''conflict of interest waivers''). OGE also plans to update citations to the Ethics in Government Act, update its street address, clarify language in routine use ''n,'' and fix several typographical errors. A Governmentwide system of records is a system of records where one agency (in this case, OGE) has regulatory authority over records in the custody of multiple agencies and the agency with regulatory authority publishes a system of records notice that applies to all of the records regardless of their custodial location.

Through the process described in 5 U.S.C. 13107, members of the public may obtain both public financial disclosure reports and conflict of interest waivers from agencies authorized to release those documents. See 5 U.S.C. 13107, 18 U.S.C. 208(d)(1). Although conflict of interest waivers may already be requested from the waiver recipient's employing agency using this process, currently the public has no way to know who has received a waiver in order to submit such a request. Therefore, OGE is proposing to add the waiver recipient's first and last name, government position, the type of report filed or waiver issued, and name of the employing agency to OGE's website, specifically its Officials' Individual Disclosures Search Collection (''search collection''). Although OGE does not and will not release conflict of interest waivers issued by another agency, the posting of this information on the OGE website will make it easier for the waivers to be requested from the waiver recipient's employing agency and help effectuate the purposes of the statutory transparency provisions. Accordingly, OGE proposes to add a new routine use ''c'' to this system of records to permit the disclosure.

The proposed routine use would also explicitly permit the disclosure of similar information regarding public financial disclosure filers. In order to allow users to select the documents they wish to request, OGE's search collection currently displays the filer's first and last name, government position, the type of report available, and name of the employing agency. OGE has the authority to display this information pursuant to current routine use ''a.'' However, the language of routine use ''a'' does not make it plain to the public that certain information regarding public financial disclosure filers will be posted on OGE's website. Therefore, OGE proposes to make that fact clear by

including public financial disclosure filers in the new routine use.

This routine use is compatible with the purpose for which the information is collected because the records at issue are required by statute to be made public. The proposed routine use merely ensures that the public has meaningful access to the request process designated by statute.

OGE also seeks to update references to the Ethics in Government Act, as recently recodified in the U.S. Code, and update references to its current street address. OGE updated the language in the routine use currently designated ''h.'' Finally, OGE seeks to modify the routine use currently designated ''n'' to clarify that it is intended to apply to any current or future ethics Executive order.

Accordingly, OGE is publishing the following notice of a revised Governmentwide system of records covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records:

SYSTEM NAME AND NUMBER:

OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, Suite 750, 250 E Street SW, Washington, DC 20024.

SYSTEM MANAGER(S):

a. For records filed directly with OGE by non-OGE employees contact the General Counsel, Office of Government Ethics, at the address set forth in the System Location section.

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned.

c. For records filed with the Federal Election Commission (FEC) by candidates for President or Vice President, contact the General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street NW, Washington, DC 20463.

d. For general questions about this system of records, contact the OGE Senior Agency Official for Privacy, Office of Government Ethics, at the address set forth in the System Location section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301, 7351, 7353; 5 U.S.C. chapter 131 (Ethics in Government Act of 1978); 31 U.S.C. 1353; E.O. 12674 (as modified by E.O. 12731); E.O. 13770 or any superseding Executive order; Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act (STOCK Act), Public Law 112–105 (2012), as amended; 5 CFR part 2634.

PURPOSE(S) OF THE SYSTEM:

All records are collected and maintained in accordance with the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, Executive Order 12674, as modified, and OGE and agency regulations thereunder. These records include the filing of financial disclosure reports and ethics agreements, waivers issued to an officer or employee pursuant to section 208 of title 18 or to an Executive order, and certificates of divestiture issued pursuant to section 502 of the Ethics Reform Act. Such reports and related records are required to assure compliance with ethics laws and regulations, and to determine if an actual or apparent conflict of interest exists between the employment of individuals by the Federal Government and their outside employment and financial interests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records about individuals whose positions have been designated as public financial disclosure filing positions in accordance with 5 U.S.C. 13103 and 5 CFR 2634.202. This system of records includes both former and current employees in these categories who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978, as amended, or who otherwise come under the requirements of the Ethics in Government Act. This system of records also contains information that is necessary for administering all provisions of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 (Pub. L. 101–194), as amended, and E.O. 12674, as modified, on any current or former officer or employee of the Executive branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains: Financial information such as salary, dividends, retirement benefits, interests in property, deposits in a bank and other financial institutions; information on gifts received; information on certain liabilities; information about positions as an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business, non-profit organization, labor organization, or educational institution; information about non-Government employment agreements, such as leaves of absence to accept Federal service, continuation of payments by a non-Federal employer; and information about assets placed in trust pending disposal. This system of records also includes other documents developed or information and material received by the Director of the Office of Government Ethics, or agency ethics officials in administering the Ethics in Government Act of 1978 or the Ethics Reform Act of 1989, as amended, which are retrieved by name or other personal identifier. Such other documents or information may include, but will not be limited to: ethics agreements, documentation of waivers issued to an officer or employee by an agency pursuant to section 208(b)(1) or section 208(b)(3) of title 18, U.S.C., or pursuant to Executive orders; certificates of divestiture issued by the President or by the Director of OGE pursuant to section 502 of the Ethics Reform Act of 1989; information necessary for the rendering of ethics counseling, advice or formal advisory opinions, or the resolution of complaints; the actual opinions issued; and records of referrals and consultations regarding current and former employees who are or have been the subject of conflicts of interest or standards of conduct inquiries or determinations, or employees who are alleged to have violated department, agency or Federal ethics statutes, rules, regulations or Executive orders. Such information may include correspondence, documents or material concerning an individual's conduct, reports of investigations with related exhibits, statements, affidavits or other records obtained during an inquiry. The information does not include information from confidential financial disclosure reports, which is maintained in OGE/GOVT–2, Executive Branch Confidential Financial Disclosure Reports.

These records may include information related to personal and family financial and other business interests, positions held outside the Government and acceptance of gifts. The records may also contain reports of action taken by the agency and decisions and reports on legal or disciplinary action resulting from any

referred administrative action or prosecution.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person, such as a trustee, attorney, accountant, banker, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflict of interests or violations of other ethics laws and persons contacted during any investigation of the allegations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: THESE RECORDS AND INFORMATION IN THESE RECORDS MAY BE USED:

a. To disclose information furnished in accordance with sections 105 and 402(b)(1) of the Ethics in Government Act of 1978, 5 U.S.C. 13107 and 13122(b)(1), and subject to the limitations contained therein, to any requesting person.

b. To disclose information to any requesting person, in accordance with section 105 of the Ethics in Government Act, 5 U.S.C. 13107, and subject to the limitations contained in section 208(d)(1) of title 18, U.S.C., any determination granting an exemption pursuant to 208(b)(1) or 208(b)(3) of title 18, U.S.C. These determinations are commonly called ''conflict of interest waivers.''

c. To disclose on OGE's and other agencies' websites and to otherwise disclose to any person, including other departments and agencies, certain information regarding individuals who have filed a public financial disclosure report pursuant to 5 U.S.C. 13103 and individuals who have received a waiver pursuant to 18 U.S.C. 208(b)(1) or 208(b)(3). Specifically, the information that may be disclosed is first and last name, government position, type of report filed or waiver issued, and name of the employing agency.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

f. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information when the disclosing agency determines that the records are relevant and necessary to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

i. To disclose the public financial disclosure report and any accompanying documents, including statements notifying an employee's supervising ethics office of the commencement of negotiations for future employment or compensation or of an agreement for future employment or compensation pursuant to section 17 of the STOCK Act (Pub. L. 112–105). to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

j. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

k. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

l. To disclose on the OGE website and to otherwise disclose to any person, including other departments and agencies, any written ethics agreements, including certifications of ethics agreement compliance, filed with the Office of Government Ethics, pursuant to 5 CFR 2634.803, by an individual nominated by the President to a position requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report.

m. To disclose on the OGE website and to otherwise disclose to any person, including other departments and agencies, any certificate of divestiture issued by the Office of Government Ethics, pursuant to 26 U.S.C. 1043.

n. To disclose on the OGE website and to otherwise disclose to any person, including other departments and agencies, any waiver issued by the President or the President's designee of the restrictions contained in an Executive order creating additional ethics commitments for any executive branch employees.

o. To disclose information to appropriate agencies, entities, and persons when: (1) the agency maintaining the records suspects or has confirmed that there has been a breach of the system of records; (2) the agency maintaining the records has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

p. To disclose information to another Federal agency or Federal entity, when the agency maintaining the record 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.

Note: When an agency is requested to furnish records in this system of records to the Director or other authorized officials of the Office of Government Ethics (OGE), such a disclosure is to be considered as made to those officers and employees of the agency which co-maintains the records who have a need for the records in the performance of their official duties in accordance with the Ethics in Government Act of 1978, 5 U.S.C. chapter 131, and other ethics-related laws, Executive orders and regulations conferring pertinent authority on OGE, pursuant to the provisions of the Privacy Act at 5 U.S.C. 552a(b)(1).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name or other programmatic identifier assigned to the individual about whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with the National Archives and Records Administration General Records Schedule 2.8 Employee Ethics Records, these records are generally retained for a period of six years after filing, or for such other period of time as is provided for in that schedule for certain specified types of ethics records. In cases where records are filed by, or with respect to, a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed and Presidential and Vice-Presidential candidates who are not elected, the records are generally destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. However, if any records are needed in an ongoing investigation, they will be retained until no longer needed in the investigation. Destruction is by shredding or electronic deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access. Access to the data in the Executive branch-wide Integrity public financial disclosure information system and OGE electronic systems is protected by electronic controls, such as multifactor authentication and password protection. Access to the systems is controlled based on user roles and responsibilities. Executive branch agencies control their users' access to information in Integrity and are responsible for properly safeguarding the records maintained in their systems.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedures section below. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

d. A reasonably specific description of the record content being sought.

Individuals requesting access to records maintained at OGE must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Because the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedures section below.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE by non-OGE employees, contact the General Counsel, Office of Government Ethics, at the agency's address as set forth in the System Location section;

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned; and

c. For records filed with the FEC by candidates for President or Vice President, contact the FEC General Counsel, Federal Election Commission, 999 E Street NW, Washington, DC 20463.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

Individuals seeking to determine if an OGE system of records contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 47303 (Sept. 9, 2019).

Approved: March 5, 2024.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2024–05083 Filed 3–8–24; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0948]

Blood Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Strategies for Testing Blood Donations for Malaria Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Blood Products Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues regarding blood and blood products. At this meeting the Committee will consider strategies to reduce the risk of transfusion-transmitted malaria by testing blood donations from donors at risk of malaria exposure. The meeting will be open to the public. FDA is establishing a docket for public comment on this topic.

DATES: The meeting will be held on May 9, 2024, from 9:30 a.m. to 3:10 p.m. eastern time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm*.

The online web conference meeting will be available at the following link on the day of the meeting: *https://youtube.com/live/eYsJqANKdmQ*.

FDA is establishing a docket for public comment on this meeting topic. The docket number is FDA–2024–N–0948. The docket will close on May 8, 2024. 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 on May 8, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date. Written comments filed after this deadline will not be considered by FDA.

Comments received on or before May 2, 2024, will be provided to the Committee. Comments received after May 2, 2024, and before the May 8, 2024, deadline will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–0948 for ''Blood Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Comments filed in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 240–731–3544, *CBERBPAC@fda.hhs.gov*; or FDA Advisory Committee Information Line, 1–800–741–8138 (301)–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. On May 9, 2024, the Committee will meet in open session to discuss strategies to reduce the risk of transfusion-transmitted malaria by testing blood donations from donors at risk of malaria exposure.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: On May 9, 2024, from 9:30 a.m. to 3:10 p.m. eastern time, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before May 2, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. eastern time on May 9, 2024. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with their names, email addresses, and direct contact phone numbers of proposed participants, and an indication of the approximate time requested to make their presentation on or before 12 noon eastern time on April 24, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably

accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 25, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Christina Vert at *CBERBPAC@fda.hhs.gov* (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: March 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–05074 Filed 3–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1824]

Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment; Guidance for Industry; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on February 22, 2024. The document announced the availability of a final guidance for industry entitled ''Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.'' The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Reasner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6373, Silver Spring, MD 20993, 301–837–7667; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 22, 2024 (89 FR 13351), in FR Doc. 2024–03622, the following correction is made:

On page 13351, in the first column in the header of the document and in the third column in the second line of the first paragraph, ''Docket No. FDA–2024–D–0584'' is corrected to read ''Docket No. FDA–2020–D–1824.''

Dated: March 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–05081 Filed 3–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2057]

Revocation of Emergency Use of a Drug Product During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Eli Lilly and Co. (Lilly), for bamlanivimab and etesevimab administered together. FDA revoked the Authorization on December 14, 2023, under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocation, which includes an explanation of the reasons for the revocation, is reprinted in this document.

DATES: The Authorization is revoked as of December 14, 2023.

ADDRESSES: Submit written requests for a single copy of the revocation to the Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Johanna McLatchy, Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor, Silver Spring, MD 20993–0002, 301–796–3200 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On February 9, 2021, FDA issued an Authorization (EUA 094) to Lilly for bamlanivimab and etesevimab administered together, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on May 27, 2021 (86 FR 28608), as required by section 564(h)(1) of the FD&C Act. The authorization of a drug for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Request

In a request received by FDA on October 23, 2023, Lilly requested revocation of, and on December 14, 2023, FDA revoked, the Authorization for bamlanivimab and etesevimab

administered together. Because Lilly has informed FDA that all lots of bamlanivimab and etesevimab manufactured and labeled for use under EUA 094 have expired, and that Lilly does not intend to offer this product in the United States anymore, Lilly requested FDA revoke the EUA for bamlanivimab and etesevimab administered together. FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA for bamlanivimab and etesevimab administered together. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

IV. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet at: *https://www.regulations.gov.*

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

December 14, 2023

Eli Lilly and Company
Attention: Jennifer Riddle Camp
Senior Director, GRA-NA
Lilly Corporate Center
Drop Code 2543
Indianapolis, IN 46285

Re: Revocation of EUA 094

Dear Jennifer Riddle Camp:

This letter is in response to the request from Eli Lilly and Company (Lilly), received on October 23, 2023[1], that the U.S. Food and Drug Administration (FDA or Agency) revoke the EUA for bamlanivimab and etesevimab administered together. The EUA for bamlanivimab and etesevimab administered together was issued initially on February 9, 2021. Lilly has informed FDA that all lots of bamlanivimab and etesevimab manufactured and labeled for use under EUA 094 have expired and that Lilly does not intend to offer this product in the United States anymore. FDA understands that Lilly will promptly notify healthcare facilities and providers that have received bamlanivimab and etesevimab administered together under the EUA to also stop using product that remains in distribution with instructions for product return.

The authorization of a drug for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization based on the reasons set forth in Lilly's request for revocation to the Agency.

Accordingly, FDA hereby revokes EUA 094 for bamlanivimab and etesevimab administered together pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, bamlanivimab and etesevimab administered together is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

[1] At the time of Lilly's request, bamlanivimab and etesevimab administered together was not authorized for use in any region of the United States due to the high frequency of circulating SARS-CoV-2 variants that are non-susceptible to bamlanivimab and etesevimab.

Sincerely,

Patrizia A. Cavazzoni -S

Digitally signed by Patrizia A. Cavazzoni -S
Date: 2023.12.14 13:47:55 -05'00'

Patrizia Cavazzoni, M.D.
Director
Center for Drug Evaluation and Research
U.S. Food and Drug Administration

Dated: March 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–05085 Filed 3–8–24; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Funding Opportunity for Indians Into Psychology (InPsy)

Announcement Type: New.

Funding Announcement Number: HHS–2024–IHS–INPSY–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.970.

Key Dates

Application Deadline Date: May 14, 2024.

Earliest Anticipated Start Date: July 1, 2024.

I. Step 1: Review the Opportunity

Funding Details

Type: Cooperative Agreement.

Competition type: New.

Expected total program funding: $805,932.

Expected number of awards: 3.

Funding range per award for the first budget year: $227,500 to $267,500.

The period of performance is for 5 years.

Continuation funding depends on the availability of funds and agency budget priorities.

Eligibility—Who can apply?

Eligible Applicants

Only the following type of organizations are eligible for this opportunity:

Public and nonprofit private colleges and universities that offer a Ph.D. or Psy.D. in clinical programs accredited by the American Psychological Association will be eligible to apply for a cooperative agreement under this announcement.

We will notify any applicants we determine to be ineligible.

Eligibility Exceptions

1. Individuals including sole proprietorships and foreign organizations are not eligible.

2. We do not fund concurrent projects under this program. If you get an award under this announcement, we cannot later fund you under other InPsy programs while this award is active.

Other Eligibility Criteria

All schools and training programs must have current, unrestricted accreditation by the American Psychological Association (APA). All institutions must be fully accredited without restrictions at the time of application.

See attachments for information you will submit to prove your eligibility.

Cost Sharing or Matching

This program has no cost-sharing requirement.

If you choose to include cost-sharing funds, we will not consider it during our review. However, we will hold you accountable for any funds you add, including through reporting.

Program Description

Background

The Indian Health Service (IHS) is responsible for providing federal health services to the American Indian and Alaska Native (AI/AN) people. Our mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level.

The Indian Healthcare Improvement Act (*https://www.ihs.gov/IHCIA/*) authorizes the IHS to administer programs designed to attract and recruit qualified Indians into health professions to ensure the availability of health professionals to serve the AI/AN population.

Purpose

Our purpose is to increase the number of Indian clinical psychologists who deliver health care services to AI/AN communities. Our primary objectives are to:

1. Recruit and train Indian people to be clinical psychologists;

2. Provide stipends to people enrolled in schools of clinical psychology to pay tuition, books, fees, and stipends for living expenses.

Required Activities

1. You must develop and maintain psychology education programs and recruit people to become clinical psychologists who will provide services to AI/AN people.

2. You must provide scholarship grants to AI/AN students enrolled in clinical psychology education programs.

3. Scholarship awards are for a one-year period.

4. You may award additional stipend support to each eligible student for up to four years.

See the project narrative and merit review sections for more detail on activities.

Cooperative Agreement Terms

Cooperative agreements use the same policies as grants. The difference is that the IHS will have substantial involvement in the project during the entire period of performance. Below is a detailed description of our level of involvement.

The IHS program official will:

- Work closely with your program director to ensure timely management and that you meet all goals and objectives of your proposed project.
- Provide American Indians into Psychology scholarship materials and policies for student program reviews.
- Initiate default proceedings within 90 days after receiving your notification that a student:

1. has been dismissed from the program;

2. has withdrawn from school;

3. failed to graduate with a Psy.D. in Clinical Psychology;

4. failed to begin a required period of supervised clinical hours required for state licensure;

5. failed to meet the minimum required number of supervised clinical hours prior to licensure;

6. failed to get licensed and begin obligated service time within 90 days; or

7. failed to complete the service.

- Receive your required semi-annual progress reports and review them for program compliance.
- Provide you with programmatic technical assistance, as requested.
- Coordinate and conduct site visits and periodic conference calls with you and students as time and budget permit.
- Work in partnership with the Division of Grants Management.

Funding Policies and Limitations

Limitations

- We allow pre-award costs up to 90 days before the start date of the award if the costs are otherwise allowable if awarded. You incur pre-award costs at your organization's risk.

Policies

- Total award funds include both direct and indirect costs.
- Each applicant can receive only one award.
- You may include, as a direct cost, tuition and student support for students selected to receive a scholarship under your program. Scholarship support is full-time tuition, fees, books, and other expenses. This includes uniforms and monthly stipends for living expenses for 12 months. The current stipend is to be $1,500 per month.

Indirect Costs

Indirect costs are those incurred for a common or joint purpose across more than one project and that cannot be easily separated by project. Learn more at 45 CFR 75.414 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414*), Indirect Costs.

Indirect costs for training awards cannot exceed 8 percent of modified total direct costs. To understand what is included in modified total direct costs, see 45 CFR 75.2 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#p-75.2(Modified%20Total%20Direct%20Cost)*).

Statutory Authority

The Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and section 217 of the Indian Health Care Improvement Act, Public Law 94–437, as amended (IHCIA), codified at 25 U.S.C. 1621p (*https://www.govinfo.gov/content/pkg/USCODE-2022-title25/html/USCODE-2022-title25-chap18-subchapII-sec1621p.htm*).

II. Step 2: Get Ready To Apply

Get Registered

System for Award Management

You must have an active account with *SAM.gov*. This includes having a Unique Entity Identifier. *SAM.gov* registration can take several weeks. Begin that process today. To register, go to *SAM.gov* Entity Registration (*https://sam.gov/content/entity-registration*) and click Get Started. From the same page, you can also click on the Entity Registration Checklist for the information you will need to register.

Grants.gov

You must also have an active account with *Grants.gov* (*https://grants.gov/home*). You can see step-by step instructions at the *Grants.gov* Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*).

Find the Application Package

The application package has all the forms you need to apply. You can find it online. Go to Grants Search at *Grants.gov* (*https://grants.gov/home*) and search for opportunity number HHS–2024–IHS–INPSY–0001.

III. Step 3: Write Your Application

Application Contents and Format

Applications include five main components. This section includes guidance on each. Make sure you include each of these:

Component	Submission form
Project Abstract	Use the Project Abstract Summary form.
Project Narrative	Use the Project Narrative Attachment form.
Budget Narrative	Use the Budget Narrative Attachment form.
Attachments	Insert each in a single Other Attachments form.
Required Forms	Upload using each required form.

Project Abstract

Page limit: 1 page.

Provide a self-contained summary of your proposed project, including the purpose and expected outcomes. Do not include any proprietary or confidential information. We use this information when we receive public information requests about funded projects.

Required format for Project and Budget Narrative:

Font size: 12-point font. Footnotes, tables, and text in graphics may be 10-point.

Font color: black.

Spacing: Single-spaced.

Margins: 1-inch.

Size: 8.5 by 11 inches.

Include consecutive page numbers.

Formats: While the forms for project and budget narratives are PDF, you may upload Word, Excel, or PDF files to those forms.

Project Narrative

Page limit: 25 pages.

Filename: Project narrative.

To create your project narrative:

- Follow the headings in the table below in order.
- Use the merit review criteria to determine what you need to include.
- Describe your proposed project and activities for the full period of performance.
- Stay within the page limit, or we will remove pages beyond that. We recommend some page limits for subsections below, but they are guidance only.

Heading	Recommended page length
Introduction and need for assistance	5
Project objectives, work plan, and approach	10
Program evaluation	5
Organization capabilities, key personnel, and qualifications	5

Budget Narrative

Page limit: 5.

Filename: Budget narrative.

The budget narrative supports the information you provide in Standard Form 424–A. See standard forms.

For more guidance on what to include in your budget narrative, see merit review criteria.

It includes added detail and justifies the costs you ask for. As you develop your budget, consider:

- If the costs are reasonable and consistent with your project's purpose and activities.
- The restrictions on spending funds. See funding limitations.

To create your budget narrative:

- Review the requirements in the merit review section for more detail.
- Show each line item in your SF–424A, organized by budget category.
- Provide the information for the entire period of performance, broken down by year.

• For each line item, describe:

1. How the costs support achieving the project's proposed objectives.

2. How you calculated or arrived at the cost.

• Take care to explain each item in the ''other'' category and why you need it.

• Do not use the budget narrative to expand your project narrative.

If you like, you can also include a spreadsheet that provides more detail than in the SF–424A. If you do, we will not count it against the page limit.

Attachments

You will upload attachments in *Grants.gov* using a single Other Attachments Form. Unless stated below, these attachments do not have page limits.

Proof of Accreditation

Submit proof of program accreditation from an accreditation agency recognized by the U.S. Department of Education or the nonprofit Council for Higher Accreditation (CHEA) and American Psychology Association (APA) and the Commission of Accreditation (CoA).

Work Plan Chart

Attach a one-page work plan chart or timetable that summarizes the work plan in your project description, outlining your activities and outcomes. See merit review criteria for detailed instructions.

Proof of Nonprofit Status

If your organization is a nonprofit, you need to attach proof. We will accept any of the following:

• A copy of a current tax exemption certificate from the IRS.

• A letter from your state's tax department, attorney general, or another state official saying that your group is a nonprofit and that none of your net earnings go to private shareholders or others.

• A certified copy of your certificate of incorporation. This document must show that your group is a nonprofit.

• Any of the above for a parent organization. Also include a statement signed by an official of the parent group that your organization is a nonprofit affiliate.

Indirect Cost Agreement

If you include indirect costs in your budget using an approved rate, include a copy of your current agreement approved by your cognizant agency for indirect costs (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#p-75.2(Cognizant%20agency%20for%20indirect%20costs).* If you use the de minimis rate, you do not need to submit this attachment.

Resumes and Position Descriptions

For key personnel, attach biographical sketches for filled positions. If a position is not filled, attach a short description of the position and qualifications. See additional instructions in merit review criteria.

Audit Documentation

You must provide documentation of required audits. You can submit:

• Email confirmation from the Federal Audit Clearinghouse (FAC) showing that you submitted the audits.

• Face sheets from audit reports. You can find these on the FAC website (*https://www.fac.gov/*).

See audit requirements at 45 CFR part 75 subpart F (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-F*).

Standard Forms

You will need to complete some standard forms. Upload the standard forms listed below at *Grants.gov*. You can find them in the NOFO application package or review them and their instructions at *Grants.gov* Forms.

Forms	Submission requirement
Application for Federal Assistance (SF–424).	With application.
Budget Information for Non-Construction Programs (SF–424A).	With application.
Grants.gov Lobbying Form	With application.
Disclosure of Lobbying Activities (SF–LLL).	If applicable, with the application.

IV. Step 4: Learn About Review and Award

Application Review

Initial Review

We review each application to make sure it meets basic requirements. We will not consider an application that:

• Is from an organization that does not meet all eligibility criteria.

• Is incomplete.

• Requests funding above the award ceiling shown in the funding range.

• Requests a period of performance longer than this NOFO allows.

• Is submitted after the deadline.

• Also, we will not review any pages over the page limit.

Merit Review

The review committee reviews all applications that pass the initial review. The members use the criteria below.

We will send your authorized official an Executive Summary Statement within 30 days after we complete reviews. This statement will outline the strengths and weaknesses of your application.

Criteria

The panel will assess the quality of your responses and soundness of your approaches to the following project narrative sections.

Criterion	Total number of points = 100
1. Introduction and need for assistance	10
2. Project objectives, work plan, and approach	40
3. Program evaluation	30
4. Organizational capabilities, key personnel, and qualifications	15
5. Support Requested	5

1. Introduction and Need for Assistance

Maximum Points: 10

a. Present the comprehensive framework of your proposed program.

b. Include the purpose and background of your program.

c. Justify the need for your project and clearly describe the unmet AI/AN psychology workforce needs in AI/AN communities.

d. Describe the social determinants and health disparities that impact AI/AN communities and how your proposed program will serve the IHS and Tribal health care programs as well as provide support to IHS scholarship recipients.

e. Discuss how these social determinants have historically affected access to AI/AN health care and have impacted AI/AN student's access to education, specifically psychology education.

f. Demonstrate your program's substantial benefit to Indian health programs.

2. Project Objectives, Work Plan, and Approach

Maximum Points: 40

a. Project objectives

1. State specific objectives of the project, and the extent to which they are measurable and quantifiable, logical, complete, and consistent with the purpose of this NOFO.

2. All universities and colleges currently participating and submitting competing continuation proposals must include new objectives for this project period.

b. Work plan

1. In your attachments, include a work plan chart, with timelines, that describes fully and clearly how you will complete your proposed activities.

c. Approach

1. Recruiting students—You must describe:

a. Your plan for outreach and recruitment for health professions to Indian communities including elementary and secondary schools as well as accredited and accessible community colleges.

b. How you will provide summer enrichment programs to expose Indian students to the various fields of psychology through research, clinical, and experimental activities.

c. Your process for advertising, selecting, and notifying scholarship students.

d. How you will encourage AI/AN clinical psychologists at the graduate and undergraduate level.

2. Training and supporting student success—You must describe how you will:

a. Provide support services to psychology students to facilitate their success in the clinical psychology program as well as track their progress.

b. Collect students' BIA–4437 forms to verify whether students receiving tuition support in their program are members of eligible, federally recognized Tribes.

c. Assist the clinical psychologist with job placement at eligible Indian health sites and track their payback status to ensure they fulfill their service obligation.

d. Provide your students with clinical rotation in AI/AN health programs.

e. Provide stipends to undergraduate and graduate students to pursue a career in psychology.

f. Use existing university tutoring, counseling, and student support services, to the maximum extent feasible.

g. Provide career counseling, academic advice, plans to correct academic deficiencies, and other activities to assist student retention.

h. Educate and train students in opioid addiction prevention, treatment, and recovery. Addressing the opioid crisis is a Health and Human Services (HHS) priority.

i. Increase the skills of and provide continuing education to clinical psychologists at the graduate and undergraduate level who deliver health services to the AI/AN population.

j. Provide mechanisms and resources to increase psychology student enrollment, retention, and graduation.

3. Oversight and collaboration—You must describe how you will:

a. Incorporate a program advisory board comprised of representatives from the Tribes and communities you plan to serve.

b. Develop affiliation agreements with tribal colleges and universities, the IHS, university-affiliated programs, and other appropriate accredited and accessible entities to enhance the education of Indian students.

c. Employ qualified Indians in the program to the maximum extent feasible.

3. Program Evaluation

Maximum Points: 30

a. Present a plan for evaluating success in carrying out the project on routine basis and in an annual quantitative and qualitative evaluation of the year's activities.

b. Identify how you will adequately document project objectives and identify what areas need improvement.

c. Demonstrate the detailed steps and timeline to effectively achieve your proposed methodology and evaluation plan.

d. Identify how the program director will meet with other program directors and staff each year to share best practices, successes, and challenges.

e. Describe your organization's significant program activities and accomplishments over the past five years associated with the goals of this announcement.

1. Provide a comparison of the actual program accomplishments to the goals established for the project period, or, if applicable, provide justification for the lack of progress.

2. Identify and summarize major project activities during the project period to improve the management of the grant program.

4. Organizational Capabilities, Key Personnel, and Qualifications

Maximum Points: 15

a. Provide an organizational chart and describe your administrative, managerial, and organization arrangements and the facilities and resources you will use to conduct your proposed project.

b. List the key personnel who will work with the program. In your attachments, submit position descriptions and resumes of program director and key staff with duties and experience.

c. Explain who will write your progress reports.

d. Identify your experience with other similar projects, including the results of those projects.

e. Provide evidence of your past or potential cooperation and experience with AI/AN communities and Tribes.

5. Budget and Budget Justification

Maximum Points: 5

a. Clearly define the budget in your Budget Information for Non-Construction Programs (SF–424A).

b. In the Budget Narrative Form, provide a justification and detailed breakdown of the funding by category for the first year of the project.

1. In your information about the program director and project staff, include salaries and percentage of time assigned to the award.

2. List equipment purchases necessary to conduct the project.

Risk Review

Before making an award, we review the risk that you will not prudently manage federal funds. We need to make sure you've handled any past federal awards well and demonstrated sound business practices. We use *SAM.gov* Responsibility/Qualification (*https://sam.gov/content/entity-information*) to check this history for all awards likely to be over $250K. You can comment on your organization's information in *SAM.gov*. We will consider your comments before making a decision about your level of risk. If we find a significant risk, we may choose not to fund your application or to place specific conditions on the award.

For more details, see 45 CFR 75.205 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-C/section-75.205*).

Selection Process

When making funding decisions, we consider:

- Merit review results. These are key in making decisions but are not the only factor.
- The larger portfolio of agency-funded projects, including the diversity of project types and geographic distribution.
- The past performance of the applicant. We may choose not to fund applicants with management or financial problems.

We may:

- Fund applications in whole or in part.
- Fund applications at a lower amount than requested.
- Decide not to allow a prime recipient to subaward if they may not be able to monitor and manage subrecipients properly.
- Choose to fund no applications under this NOFO.

Award Notices

After we review and select applications for award, we will let you know the outcome.

Unsuccessful Applications

We will email you or write you a letter if your application is disqualified or unsuccessful.

Approved but Unfunded Applications

It is possible that we could approve your application, but do not have enough funds to reach it. If so, we will hold your application for one year. If funding becomes available during the year, we may reconsider funding.

Approved Applications

If you are successful, we will create a Notice of Award (NoA). You will need a GrantSolutions user account (*https://www.grantsolutions.gov/home/getting-started-request-a-user-account/*) to retrieve your NoA.

The NoA is the only official award document. The NoA tells you about the amount of the award, important dates, and the terms and conditions you need to follow. Until you receive the NoA, you do not have permission to start work.

V. Step 5: Submit Your Application

Application Submission and Deadlines

See find the application package to make sure you have everything you need.

Make sure you are current with *SAM.gov* and UEI requirements. See get registered (*https://sam.gov/content/entity-registration*). You will have to maintain your registration throughout the life of any award.

Application Deadline

You must submit your application by May 14, 2024, at 11:59 p.m. ET.

Grants.gov creates a date and time record when it receives the application. If you submit the same application more than once, we will accept the last on-time submission.

The grants management officer may extend an application due date based on emergency situations such as documented natural disasters or a verifiable widespread disruption of electric or mail service.

Application Submission

You must submit your application through *Grants.gov*. See get registered (*https://sam.gov/content/entity-registration*).

For instructions on how to submit in *Grants.gov*, see the Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*). Make sure that your application passes the *Grants.gov* validation checks or we may not get it. Do not encrypt, zip, or password protect any files. The link above will also help you learn how to create PDFs. See contacts & support if you need help.

Exemptions

If you cannot submit through *Grants.gov*, you must request a waiver before the application due date. Send your waiver request to *DGM@ihs.gov.* Include clear justification for the need to deviate from the required application submission process. Failure to register in *SAM.gov* or *Grants.gov* in a timely way is not cause for a waiver. We will not accept applications outside of *Grants.gov* without an approved waiver.

We will email you if we approve your waiver. This notification will include submission instructions. If approved, we must receive your application by 5:00 p.m. ET on the application deadline.

Other Submissions

Intergovernmental Review

This NOFO is not subject to executive order 12372, Intergovernmental Review of Federal Programs. No action is needed.

Mandatory Disclosure

You must submit any information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. See Mandatory Disclosures, 45 CFR 75.113 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-B/section-75.113*).

Send written disclosures to IHS at *DGM@ihs.gov* and to the Office of Inspector General at *grantdisclosures@oig.hhs.gov.* Include ''Mandatory Grant Disclosures'' in subject line.

Application Checklist

Make sure you have everything you need to apply:

Component	How to upload	Page limit
☐ Project Abstract	Use the Project Abstract Summary form	1 page
☐ Project Narrative	Use the project Narrative Attachment form	25 pages
☐ Budget Narrative	Use the Budget Narrative Attachment form	5 pages
Attachments	Insert each in a single Other Attachments form..	
☐ Tribal resolution		None
☐ Work plan chart		1 page
☐ Proof of nonprofit status		None
☐ Indirect cost agreement		None
☐ Resumes and position descriptions		None
☐ Letter of support		None
☐ Audit documentation		None
Other Required Forms (3 total)	Upload using each required form.	
☐ Application for Federal Assistance (SF–424)		None
☐ Budget Information for Non-Construction Programs (SF–424A).		None
☐ *Grants.gov* Lobbying Form		None
☐ Disclosure of Lobbying Activities (SF–LLL)		None

VIII. Step 6: Learn What Happens After Award

Post-Award Requirements and Administration

Administrative and National Policy Requirements

There are important rules you need to know if you get an award. You must follow:

- All terms and conditions in the Notice of Award.
- The regulations listed in 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75*).
- The HHS Grants Policy Statement (GPS) (*https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf*). This document has terms and conditions tied to your award. If there are any exceptions to the GPS, they will be listed in your Notice of Award.
- All federal statutes and regulations relevant to federal financial assistance, including those highlighted in the HHS Administrative and National Policy Requirements (*https://www.hhs.gov/sites/default/files/hhs-administrative-national-policy-requirements.pdf*).

Reporting

If you are successful, you will have to submit financial and performance reports and possibly reports on specific types of activities. Your NoA will outline the specific requirements and deadlines. To learn more about reporting, see:

- Performance Progress Reports
- Progress Report Requirements
- Financial Reporting

If your award includes funds for a conference, you must submit a report for all conferences.

If you do not submit your reports on time, we could:

- Suspend or terminate your award
- Withhold payments
- Move you to a reimbursement payment method
- Withhold future awards
- Take other enforcement actions
- Impose special award conditions if the situation continues

Non-Discrimination and Assurance

If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov.* You must also submit an Assurance of Compliance (HHS–690) (*https://www.hhs.gov/sites/default/files/form-hhs690.pdf*). To learn more, see the Laws and Regulations Enforced by the HHS Office for Civil Rights (*https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html*).

VI. Contacts and Support

Agency Contacts

1. Program and Eligibility, Eric Pinto, Senior Program Specialist, Email: *Eric.Pinto@ihs.gov,* Phone: 301–443–2544.

2. Grants Management and Financial, *DGM@ihs.gov.*

Grants.gov

Grants.gov provides 24/7 support. You can call 1–800–518–4726 or email *support@grants.gov.* Hold on to your ticket number.

If problems persist, contact the Office of Grants Management at *DGM@ihs.gov.* Please do so at least 10 days before the application due date.

SAM.gov

If you need help, you can call 866–606–8220 or live chat with the Federal Service Desk (*https://www.fsd.gov/gsafsd_sp*).

GrantSolutions

For help, please contact the GrantSolutions help desk at 866–577–0771, or by email at *help@grantsolutions.gov.*

Reference Websites

- U.S. Department of Health and Human Services (HHS) (*https://www.hhs.gov/*)
- Division of Grants Management | Indian Health Service (IHS) (*https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding*)
- Grants Training Tools | Division of Grants Management (ihs.gov) (*https://www.ihs.gov/dgm/training1/*)
- Code of Federal Regulations (CFR) (*https://www.ecfr.gov/*)
- United States Code (U.S.C.) (*https://uscode.house.gov/*)

Roselyn Tso,

Director, Indian Health Service.

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BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Funding Opportunity for Indians Into Medicine (InMed)

Announcement Type: New.

Funding Announcement Number: HHS–2024–IHS–INMED–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.970.

Key Dates

Application Deadline Date: May 14, 2024.

Earliest Anticipated Start Date: July 1, 2024.

I. Step 1: Review the Opportunity

Funding Details

Type: Grant.

Competition type: New.

Expected total program funding: $1,461,104.

Expected number of awards: 4.

Funding range per award for the first budget year: $230,000 to $700,000.

The period of performance is for 5 years.

Continuation funding depends on the availability of funds and agency budget priorities.

Eligibility—Who Can Apply

Eligible Applicants

Only the following type of organization may apply:

A public or nonprofit private college or university that:

1. Has a medical or other allied health program, other than a nursing program.

2. Is accredited by an accrediting agency recognized by the U.S. Secretary of Education.

3. Has a target population for its proposed program that does not include Indian Tribes within the states of North Dakota, South Dakota, Nebraska, Wyoming, and Montana. The existing University of North Dakota InMed grant program serves these states.

Other Eligibility Criteria

We do not fund concurrent projects under this program. If you get an award under this announcement, we cannot fund you under other InMed programs while this award is active. Individuals, including sole proprietorships, and foreign organizations are not eligible.

Cost Sharing or Matching

This program has no cost-sharing requirement.

If you choose to include cost-sharing funds, we will not consider it during our review. However, we will hold you accountable for any funds you add, including through reporting.

Program Description

Background

The Indian Health Service (IHS) is responsible for providing federal health services to the American Indian and Alaska Native (AI/AN) people. Our

mission is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level.

The Indian Healthcare Improvement Act (*https://www.ihs.gov/IHCIA/*), Public Law 94–437. 25 U.S.C. 1616g (*https://www.govinfo.gov/content/pkg/USCODE-2022-title25/html/USCODE-2022-title25-chap18-subchapI-sec1616g.htm*) authorizes the IHS to administer programs designed to attract and recruit qualified Indians into health professions and to ensure the availability of health professionals to serve the AI/AN population.

Purpose

The purpose of this program is to add to the number of Indian health professionals serving Indians by encouraging Indians to enter the health professions and removing barriers to serving Indians.

Allowable Activities

1. Provide outreach and recruitment of people to serve Indian communities in the health professions. Include recruitment and outreach at elementary and secondary schools as well as community colleges located on Indian reservations that your program will serve.
2. Incorporate a program advisory board of representatives from the Tribes and communities you will serve.
3. Provide summer preparatory programs for Indian students who need enrichment in the subjects of math and science needed to pursue training in the health professions.
4. Provide tutoring, counseling, and support to students who are enrolled in a health career program of study at your college or university.
5. Employ qualified Indians in the program, to the maximum extent feasible. Describe the college or university's ability to meet this requirement.
6. Address the opioid crisis, which is an HHS priority, by educating and training students in opioid addiction prevention, treatment, and recovery.

Funding Policies and Limitations

Limitations

- We allow pre-award costs up to 90 days before the start date of the award provided the costs would be allowable if awarded. Pre-award costs are incurred at the risk of the applicant.

Policies

- The available funding level of between $230,000 and $700,000 is inclusive of both direct and indirect costs.
- You may include as a direct cost support costs related to tutoring, counseling, and support for students enrolled in a health career program of study at the respective college or university.
- We do not allow tuition and stipends for regular sessions under the grant; however, students recruited through the InMed program may apply for funding from the IHS Scholarship Programs.
- Each applicant can receive only one award under this announcement.

Indirect Costs

Indirect costs are those incurred for a common or joint purpose across more than one project and that cannot be easily separated by project. Learn more at 45 CFR 75.414 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414*), Indirect Costs. Indirect costs for training awards cannot exceed 8 percent of modified total direct costs. To understand what is included in modified total direct costs, see 45 CFR 75.2 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#p-75.2(Modified%20Total%20Direct%20Cost)*).

Statutory Authority

The Indian Healthcare Improvement Act, (*https://www.ihs.gov/IHCIA/*), Public Law 94–437. 25 U.S.C. 1616g (*https://www.govinfo.gov/content/pkg/USCODE-2022-title25/html/USCODE-2022-title25-chap18-subchapI-sec1616g.htm*).

II. Step 2: Get Ready To Apply

Get Registered

System for Award Management

You must have an active account with *SAM.gov*. This includes having a Unique Entity Identifier. *SAM.gov* registration can take several weeks. Begin that process today.

To register, go to *SAM.gov* Entity Registration (*https://sam.gov/content/entity-registration*) and click Get Started. From the same page, you can also click on the Entity Registration Checklist for the information you will need to register.

Grants.gov

You must also have an active account with *Grants.gov* (*https://grants.gov/home*). You can see step-by step instructions at the *Grants.gov* Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*).

Find the Application Package

The application package has all the forms you need to apply. You can find it online. Go to Grants Search at *Grants.gov* (*https://grants.gov/home*) and search for opportunity number HHS–2024–IHS–INMED–0001.

III. Step 3: Write Your Application

Application Contents and Format

Applications include five main components. This section includes guidance on each. Make sure you include each of these:

Component	Submission form
Project Abstract.	Use the Project Abstract Summary form.
Project Narrative.	Use the Project Narrative Attachment form.
Budget Narrative.	Use the Budget Narrative Attachment form.
Attachments	Insert each in a single Other Attachments form.
Required Forms.	Upload using each required form.

Project Abstract

Page limit: 1 page.

Provide a self-contained summary of your proposed project, including the purpose and expected outcomes. Do not include any proprietary or confidential information. We use this information when we receive public information requests about funded projects.

Required format for Project and Budget Narrative:

Font size: 12-point font. Footnotes, tables, and text in graphics may be 10-point.

Font color: black.

Spacing: Single-spaced.

Margins: 1-inch.

Size: 8.5 by 11 inches.

Include consecutive page numbers.

Formats: While the forms for project and budget narratives are PDF, you may upload Word, Excel, or PDF files to those forms.

Project Narrative

Page limit: 25 pages.

Filename: Project narrative.

To create your project narrative:

- Follow the headings in the table below in order.
- Use the merit review criteria to determine what you need to include.
- Describe your proposed project and activities for the full period of performance.
- Stay within the page limit, or we will remove pages beyond that. We recommend some page limits for subsections below, but they are guidance only.

Heading	Recommended page length
Introduction and need for assistance	1 to 2
Project objectives, work plan, and approach	7 to 9
Program evaluation	5 to 7
Organization capabilities, key personnel, and qualifications	6 to 7

Budget Narrative

Page limit: 5.

Filename: Budget narrative.

The budget narrative supports the information you provide in Standard Form 424–A. See standard forms.

For more guidance on what to include in your budget narrative, see merit review criteria.

It includes added detail and justifies the costs you ask for. As you develop your budget, consider:

- If the costs are reasonable and consistent with your project's purpose and activities.
- The restrictions on spending funds. See funding policies & limitations.

To create your budget narrative:

- Show each line item in your SF–424A, organized by budget category.
- Provide the information for the entire period of performance, broken down by year.

For each line item, describe:

- How the costs support achieving the project's proposed objectives.
- How you calculated or arrived at the cost.

Take care to explain each item in the ''other'' category and why you need it.

Do not use the budget narrative to expand your project narrative.

If you like, you can also include a spreadsheet that provides more detail than in the SF–424A. If you do, we will not count it against the page limit.

Budget Justification for Conferences

You must provide a separate detailed budget justification for each conference anticipated.

In your justification, you must address these cost categories:

- Contract or planner
- Meeting space or venue
- Registration website
- Audiovisual
- Speakers fees
- Non-Federal attendee travel
- Registration fees
- Other

Attachments

You will upload attachments in *Grants.gov* using a single Other Attachments Form. Unless stated below, these attachments do not have page limits.

Work Plan Chart

Attach a one-page work plan chart or timetable that summarizes the work plan in your project description, outlining your activities and outcomes. See merit review criteria for detailed instructions.

Proof of Nonprofit Status

If your organization is a nonprofit, you need to attach proof. We will accept any of the following:

- A copy of a current tax exemption certificate from the IRS.
- A letter from your state's tax department, attorney general, or another state official saying that your group is a nonprofit and that none of your net earnings go to private shareholders or others.
- A certified copy of your certificate of incorporation. This document must show that your group is a nonprofit.
- Any of the above for a parent organization. Also include a statement signed by an official of the parent group that your organization is a nonprofit affiliate.

Indirect Cost Agreement

If you include indirect costs in your budget using an approved rate, include a copy of your current agreement approved by your cognizant agency for indirect costs (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#p-75.2(Cognizant%20agency%20for%20indirect%20costs)).* If you use the de minimis rate, you do not need to submit this attachment.

Resumes and Position Descriptions

For key personnel, attach biographical sketches for filled positions. For unfilled positions, attach a short description of the position and qualifications. See additional instructions in merit review criteria.

Letter of Support

Attach letters of support from organization's Board of Directors.

Audit Documentation

You must provide documentation of required audits. You can submit:

- Email confirmation from the Federal Audit Clearinghouse (FAC) showing that you submitted the audits.
- Face sheets from audit reports. You can find these on the FAC website (*https://www.fac.gov/*).
- See audit requirements at 45 CFR part 75 subpart F (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-F*).

Other Required Forms

You will need to complete some standard forms. Upload the standard forms listed below at *Grants.gov*. You can find them in the NOFO application package or review them and their instructions at *Grants.gov* Forms.

Forms	Submission requirement
Application for Federal Assistance (SF–424).	With application.
Budget Information for Non-Construction Programs (SF–424A).	With application.
Grants.gov Lobbying Form	With application.
Disclosure of Lobbying Activities (SF–LLL).	If applicable, with the application.

IV. Step 4: Learn About Review and Award

Application Review

Initial Review

We review each application to make sure it meets basic requirements. We will not consider an application that:

- Is from an organization that does not meet all eligibility criteria.
- Is incomplete.
- Requests funding above the award ceiling shown in the funding range.
- Requests a period of performance longer than this NOFO allows.
- Is submitted after the deadline.
- Also, we will not review any pages over the page limit.

Merit Review

The review committee reviews all applications that pass the initial review. The members use the criteria below.

We will send your authorized official an Executive Summary Statement within 30 days after we complete reviews. This statement will outline the strengths and weaknesses of your application.

The following criteria also provide guidance on what to provide in your project narrative and your budget and budget narrative.

Criteria

Criterion	Total number of points = 100
1. Introduction and need for assistance	10
2. Project objectives, work plan, and approach	40
3. Program evaluation	30
4. Organizational capabilities, key personnel, and qualifications	15
5. Support Requested	5

The panel will assess the quality of your responses and soundness of your approaches to the following project narrative sections.

1. Introduction and Need for Assistance

Maximum Points: 10

a. Describe why this project is needed for the population you plan to serve.

b. Explain how your approach is significant to the needs of Indian People.

2. Project Objectives, Work Plan, and Approach

Maximum Points: 40

a. Project objectives

(1) State specific objectives of the project, and the extent to which they are measurable and quantifiable, logical, complete, and consistent with the purpose of 25 U.S.C. 1616g (*https://www.govinfo.gov/content/pkg/USCODE-2022-title25/html/USCODE-2022-title25-chap18-subchapI-sec1616g.htm*).

(2) Describe briefly what you intend for the project to accomplish. Identify the results, benefits, and outcomes or products expected from each project objective you list in the previous section.

b. Work plan

(1) In your attachments, provide a work plan that lists:

(a) each objective

(b) the planned tasks needed to reach the objective

(c) the time to accomplish each task

(d) challenges

(e) a place to record accomplished tasks in the future

(2) Project your time frames in a realistic manner to ensure that you can complete the scope of work within each 12-month budget period.

c. Approach

(1) Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

(2) Describe the methodology you will use to access the target population.

(3) Develop a strategy to recruit AI/AN students with the potential for completing education or training in the health professions successfully.

(4) Indicate the number of potential Indian students you plan to contact and recruit as well as potential cost per student recruited. We will give first consideration to those projects that have the potential to serve a greater number of Indians.

(5) Describe your methodology to locate and recruit students with educational potential in a variety of health care fields. Include primary recruitment efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. We exclude the nursing field from this grant program.

(6) In the case of proposed projects to identify Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

(7) Provide data and supporting documentation to substantiate the need for recruitment.

3. Program Evaluation

Maximum Points: 30

a. State clearly the criteria you will use to evaluate the project's progress and success.

b. Explain the methodology you will use to determine if the project is meeting your needs, goals, and objectives and if the project is achieving the identified results and benefits.

c. Identify who will perform the evaluation and when.

d. Provide information on how you will obtain, analyze, and store recruitment and retention data. Specifically, provide information on how you will securely house data on participants, including any sensitive Personally Identifiable Information (PII).

4. Organizational Capabilities, Key Personnel, and Qualifications

Maximum Points: 15

a. Provide an organizational chart and describe the administrative, managerial, and organization arrangements, and the facilities and resources you will use to conduct the proposed project.

b. For your proposed staff, provide:

(1) The name and qualifications of the project director or other people responsible for conducting the project;

(2) The qualifications of the principal staff carrying out the project;

(3) A description of the way your staff is or will be organized and supervised to carry out the proposed project.

c. List the key personnel who will work with the program. Explain who will be writing the progress report. In your attachments, you will also include the position descriptions and resumes of the program director and key staff with duties and experience.

d. Describe any prior experience in administering similar projects.

e. Describe the current and proposed participation of Indians, if any, in your organization.

f. Identify existing university tutoring, counseling, and student support services.

g. Identify existing or pursued affiliation agreements with Tribal community colleges, the IHS, university-affiliated programs, and other appropriate entities to enhance the education of Indian students.

h. Discuss the commitment of the organization. Although not required, this might include the level of non-federal support. List your intended financial participation, if any, in the proposed project. Specify the type of contributions such as cash or services and loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

5. Budget and Budget Justification

Maximum Points: 5

a. Clearly define the budget in your Budget Information for Non-Construction Programs (SF–424A).

b. In the Budget Narrative Attachment Form, provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment assigned to the grant. List equipment purchases necessary to conduct the project. See budget narrative.

c. Provide budgetary information for summer preparatory programs for Indian students, who need enrichment in the subjects of math and science to pursue training in the health professions.

Risk Review

Before making an award, we review the risk that you will not prudently manage federal funds. We need to make sure you've handled any past federal awards well and demonstrated sound business practices. We use *SAM.gov* Responsibility/Qualification (*https://sam.gov/content/entity-information*) to check this history for all awards likely to be over $250K. You can comment on your organization's information in *SAM.gov*. We will consider your comments before making a decision about your level of risk.

If we find a significant risk, we may choose not to fund your application or to place specific conditions on the award.

For more details, see 45 CFR 75.205 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-C/section-75.205*).

Selection Process

When making funding decisions, we consider:

- Merit review results. These are key in making decisions but are not the only factor.
- The larger portfolio of agency-funded projects, including the diversity of project types and geographic distribution.
- The past performance of the applicant. We may choose not to fund applicants with management or financial problems.

We may:

- Fund applications in whole or in part.
- Fund applications at a lower amount than requested.
- Decide not to allow a prime recipient to subaward if they may not be able to monitor and manage subrecipients properly.
- Choose to fund no applications under this NOFO.

Award Notices

After we review and select applications for award, we will let you know the outcome.

Unsuccessful Applications

We will email you or write you a letter if your application is disqualified or unsuccessful.

Approved But Unfunded Applications

It is possible that we could approve your application, but do not have enough funds to reach it. If so, we will hold your application for one year. If funding becomes available during the year, we may reconsider funding.

Approved Applications

If you are successful, we will create a Notice of Award (NoA). You will need a GrantSolutions user account (*https://www.grantsolutions.gov/home/getting-started-request-a-user-account/*) to retrieve your NoA.

The NoA is the only official award document. The NoA tells you about the amount of the award, important dates, and the terms and conditions you need to follow. Until you receive the NoA, you do not have permission to start work.

V. Step 5: Submit Your Application

Application Submission and Deadlines

See find the application package to make sure you have everything you need. Make sure you are current with *SAM.gov* and UEI requirements. See get registered (*https://sam.gov/content/entity-registration*). You will have to maintain your registration throughout the life of any award.

Application Deadline

You must submit your application by May 14, 2024, at 11:59 p.m. ET.

Grants.gov creates a date and time record when it receives the application. If you submit the same application more than once, we will accept the last on-time submission.

The grants management officer may extend an application due date based on emergency situations such as documented natural disasters or a verifiable widespread disruption of electric or mail service.

Application Submission

You must submit your application through *Grants.gov*. See get registered (*https://sam.gov/content/entity-registration*).

For instructions on how to submit in *Grants.gov*, see the Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*). Make sure that your application passes the *Grants.gov* validation checks or we may not get it. Do not encrypt, zip, or password protect any files. The link above will also help you learn how to create PDFs.

See contacts & support if you need help.

Exemptions

If you cannot submit through *Grants.gov*, you must request a waiver before the application due date. Send your waiver request to *DGM@ihs.gov.* Include clear justification for the need to deviate from the required application submission process. Failure to register in *SAM.gov* or *Grants.gov* in a timely way is not cause for a waiver. We will not accept applications outside of *Grants.gov* without an approved waiver.

We will email you if we approve your waiver. This notification will include submission instructions. If approved, we must receive your application by 5:00 p.m. ET on the application deadline.

Other Submissions

Intergovernmental Review

This NOFO is not subject to executive order 12372, Intergovernmental Review of Federal Programs. No action is needed.

Mandatory Disclosure

You must submit any information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. See Mandatory Disclosures, 45 CFR 75.113 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-B/section-75.113*).

Send written disclosures to IHS at *DGM@ihs.gov* and to the Office of Inspector General at *grantdisclosures@oig.hhs.gov.* Include ''Mandatory Grant Disclosures'' in subject line.

Application Checklist

Make sure you have everything you need to apply:

Component	How to upload	Page limit
☐ Project Abstract	Use the Project Abstract Summary form	1 page.
☐ Project Narrative	Use the project Narrative Attachment form	25 pages.
☐ Budget Narrative	Use the Budget Narrative Attachment form	5 pages.
Attachments	Insert each in a single Other Attachments form.	
☐ Tribal resolution		None.
☐ Work plan chart		1 page.
☐ Proof of nonprofit status		None.
☐ Indirect cost agreement		None.
☐ Resumes and position descriptions		None.
☐ Letter of support		None.
☐ Audit documentation		None.
Other Required Forms (3 total)	Upload using each required form.	
☐ Application for Federal Assistance (SF–424)		None.
☐ Budget Information for Non-Construction Programs (SF–424A).		None.
☐ *Grants.gov* Lobbying Form		None.
☐ Disclosure of Lobbying Activities (SF–LLL)		None.

VIII. Step 6: Learn What Happens After Award

Post-Award Requirements and Administration

Administrative and National Policy Requirements

There are important rules you need to know if you get an award. You must follow:

- All terms and conditions in the Notice of Award.
- The regulations listed in 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75*).
- The HHS Grants Policy Statement (GPS) (*https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf*). This document has terms and conditions tied to your award. If there are any exceptions to the GPS, they will be listed in your Notice of Award.
- All federal statutes and regulations relevant to federal financial assistance, including those highlighted in the HHS Administrative and National Policy Requirements (*https://www.hhs.gov/sites/default/files/hhs-administrative-national-policy-requirements.pdf*).

Reporting

If you are successful, you will have to submit financial and performance reports and possibly reports on specific types of activities. Your NoA will outline the specific requirements and deadlines. To learn more about reporting, see:

- Performance Progress Reports
- Progress Report Requirements
- Financial Reporting

If your award includes funds for a conference, you must submit a report for all conferences.

If you do not submit your reports on time, we could:

- Suspend or terminate your award
- Withhold payments
- Move you to a reimbursement payment method
- Withhold future awards
- Take other enforcement actions
- Impose special award conditions if the situation continues

Non-Discrimination and Assurance

If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov.* You must also submit an Assurance of Compliance (HHS–690) (*https://www.hhs.gov/sites/default/files/form-hhs690.pdf*). To learn more, see the Laws and Regulations Enforced by the HHS Office for Civil Rights (*https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html*).

VI. Contacts and Support

Agency Contacts

1. Program and Eligibility, Correy Ahhaitty, *Correy.Ahhaitty@ihs.gov,* 301–443–2544.

2. Grants Management and Financial, *DGM@ihs.gov.*

Grants.gov

Grants.gov provides 24/7 support. You can call 1–800–518–4726 or email *support@grants.gov.* Hold on to your ticket number.

If problems persist, contact the Office of Grants Management at *DGM@ihs.gov.* Please do so at least 10 days before the application due date.

SAM.gov

If you need help, you can call 866–606–8220 or live chat with the Federal Service Desk (*https://www.fsd.gov/gsafsd_sp*).

GrantSolutions

For help, please contact the GrantSolutions help desk at 866–577–0771, or by email at *help@grantsolutions.gov.*

Reference Websites

- U.S. Department of Health and Human Services (HHS) (*https://www.hhs.gov/*)
- Division of Grants Management | Indian Health Service (IHS) (*https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding*)
- Grants Training Tools | Division of Grants Management (ihs.gov) (*https://www.ihs.gov/dgm/training1/*)
- Code of Federal Regulations (CFR) (*https://www.ecfr.gov/*)
- United States Code (U.S.C.) (*https://uscode.house.gov/*)

Roselyn Tso,

Director, Indian Health Service.

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BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Funding Opportunity for Indians Into Nursing (NU)

Announcement Type: New.

Funding Announcement Number: HHS–2024–IHS–NU–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.970.

Key Dates

Application Deadline Date: May 14, 2024.

Earliest Anticipated Start Date: July 1, 2024.

I. Step 1: Review the Opportunity

Funding Details

Type: Cooperative Agreement.

Competition type: New and Competing continuation applications.

Expected total program funding: $1,889,986.

Expected number of awards: 5.

Funding range per award for the first budget year: $300,000 to $400,000.

The period of performance is for 5 years.

Continuation funding depends on the availability of funds and agency budget priorities.

Eligibility—Who can apply?

Eligible Applicants

Only these types or organizations may apply:

1. Accredited public or private schools of nursing.

2. Accredited tribally controlled community colleges.

3. Accredited tribally controlled post-secondary vocational institutions.

4. Nurse midwife programs and nurse practitioner programs that are provided by any public or private institution.

We will notify any applicants we determine to be ineligible.

Eligibility Exceptions

1. Individuals including sole proprietorships and foreign organizations are not eligible.

2. We do not fund concurrent projects under this program. If you get an award under this announcement, we cannot later fund you under other Indians into Psychology (InPsy) programs while this award is active.

Other Eligibility Criteria

1. All schools of nursing must be fully accredited without restrictions at the time of application by a national nurse educational accrediting body or state approval body recognized by the Secretary of the U.S. Department of Education for the purposes of nursing education.

2. The schools offering a degree in nurse midwifery must provide verification of accreditation by the American College of Nurse Midwives.

3. Tribally controlled community colleges nursing programs and post-secondary vocational institutions must be fully accredited by an appropriate recognized nursing accrediting body without restrictions.

Cost Sharing or Matching

This program has no cost-sharing requirement.

If you choose to include cost-sharing funds, we will not consider it during our review. However, we will hold you accountable for any funds you add, including through reporting.

Program Description

Background

The Indian Health Service (IHS) is responsible for providing Federal health services to the American Indian and Alaska Native (AI/AN) people. Our mission is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level. The Indian Healthcare Improvement Act (*https://www.ihs.gov/IHCIA/*) authorizes the IHS to administer programs designed to attract and recruit qualified Indians into health professions to ensure the availability of health professionals to serve the AI/AN population.

Purpose

Our purpose is to recruit, retain, graduate, and increase the number of registered nurses, certified nurse midwives, and nurse practitioners who deliver health care services to AI/AN communities. Our primary objectives are to:

1. Recruit and train Indian people in nursing fields.
2. Increase the skills of, and provide continuing education to nurses and advanced practice nurses.

Required Activities

1. Recruit and train AI/AN people to become baccalaureate-prepared nurses and advanced practice nurses; nurse midwives; and nurse practitioners.
2. Provide a scholarship program that encourages registered nurses and advanced practice nurses to provide or continue to provide health care services to AI/AN communities.
3. Provide scholarships to AI/AN people to cover tuition, books, fees, room and board, stipend for living expenses, or other expenses related to baccalaureate-level nursing or advanced practice nursing programs.
4. Develop and maintain nursing education programs and recruit people to become registered nurses and advanced practice nurses who will provide services to AI/AN people.
5. See the project narrative and merit review sections for more detail on activities.

Cooperative Agreement Terms

Cooperative agreements use the same policies as grants. The difference is that IHS will have substantial involvement in the project during the entire period of performance. Below is a detailed description of our level of involvement.

An IHS program official will:

- Work with your project director to ensure timely receipt of progress and audit reports and to ensure program compliance.
- Provide you with programmatic technical assistance, as needed.
- Coordinate and conduct site visits as needed.
- Conduct semi-annual conference calls with recipients and students.
- Work with the Division of Grants Management (DGM) to ensure that you meet all goals and objectives of your program.
- Provide programs and scholarship recipients with information on IHS scholarship service obligation requirements.
- Initiate default proceedings within 90 days after receiving your notification that a student:

1. has been dismissed from the program;
2. has withdrawn from school;
3. failed to graduate with nursing degree;
4. failed to begin a required period of supervised clinical hours required for state licensure;
5. failed to get licensed and begin obligated service time within 90 days of graduation; or
6. failed to complete service.

Funding Policies and Limitations

Limitations

- We allow pre-award costs up to 90 days before the start date of the award if the costs are otherwise allowable if awarded. You incur pre-award costs at your organization's risk.

Policies

- Total award funds include both direct and indirect costs.
- Each applicant can receive only one award under this announcement.

Indirect Costs

Indirect costs are those incurred for a common or joint purpose across more than one project and that cannot be easily separated by project. Learn more at 45 CFR 75.414 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414*), Indirect Costs. Indirect costs for training awards cannot exceed 8 percent of modified total direct costs. To understand what is included in modified total direct costs, see 45 CFR 75.2 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#p-75.2(Modified%20Total%20Direct%20Cost)*).

Statutory Authority

The Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and section 112 of the Indian Health Care Improvement Act, Public Law 94–437, as amended (IHCIA), codified at 25 U.S.C. 1616e (*https://www.govinfo.gov/content/pkg/USCODE-2022-title25/html/USCODE-2022-title25-chap18-subchapI-sec1616e.htm*).

II. Step 2: Get Ready To Apply

Get Registered

System for Award Management

You must have an active account with *SAM.gov.* This includes having a Unique Entity Identifier. *SAM.gov* registration can take several weeks. Begin that process today. To register, go to *SAM.gov* Entity Registration (*https://sam.gov/content/entity-registration*) and click Get Started. From the same page, you can also click on the Entity Registration Checklist for the information you will need to register.

Grants.gov

You must also have an active account with *Grants.gov* (*https://grants.gov/home*). You can see step-by step instructions at the *Grants.gov* Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*).

Find the Application Package

The application package has all the forms you need to apply. You can find it online. Go to Grants Search at *Grants.gov* (*https://grants.gov/home*) and search for opportunity number HHS–2024–IHS–NU–0001.

III. Step 3: Write Your Application

Application Contents and Format

Applications include five main components. This section includes guidance on each. Make sure you include each of these:

Component	Submission form
Project Abstract	Use the Project Abstract Summary form.
Project Narrative	Use the Project Narrative Attachment form.
Budget Narrative	Use the Budget Narrative Attachment form.
Attachments	Insert each in a single Other Attachments form.
Required Forms	Upload using each required form.

Project Abstract

Page limit: 1 page.

Provide a self-contained summary of your proposed project, including the purpose and expected outcomes. Do not include any proprietary or confidential information. We use this information when we receive public information requests about funded projects.

Required Format for Project and Budget Narrative:

Font size: 12-point font. Footnotes, tables, and text in graphics may be 10-point.

Font color: black.

Spacing: Single-spaced.

Margins: 1-inch.

Size: 8.5 by 11 inches.

Include consecutive page numbers.

Formats: While the forms for project and budget narratives are PDF, you may upload Word, Excel, or PDF files to those forms.

Project Narrative

Page limit: 25 pages.

Filename: Project narrative.

To create your project narrative:

- Follow the headings in the table below in order.
- Use the merit review criteria to determine what you need to include.
- Describe your proposed project and activities for the full period of performance.
- Stay within the page limit, or we will remove pages beyond that. We recommend some page limits for subsections below, but they are guidance only.

Heading	Recommended page length
Introduction and need for assistance	5
Project objectives, work plan, and approach	5
Program evaluation	5
Organization capabilities, key personnel, and qualifications	10

Budget Narrative

Page limit: 5.

Filename: Budget narrative.

The budget narrative supports the information you provide in Standard Form 424–A. See standard forms.

For more guidance on what to include in your budget narrative, see merit review criteria.

It includes added detail and justifies the costs you ask for. As you develop your budget, consider:

- If the costs are reasonable and consistent with your project's purpose and activities.
- The restrictions on spending funds. See funding limitations.

To create your budget narrative:

- Review the requirements in the merit review section for more detail.
- Show each line item in your SF–424A, organized by budget category.
- Provide the information for the entire period of performance, broken down by year.
- For each line item, describe:

1. How the costs support achieving the project's proposed objectives.
2. How you calculated or arrived at the cost.

Take care to explain each item in the ''other'' category and why you need it. Do not use the budget narrative to expand your project narrative.

If you like, you can also include a spreadsheet that provides more detail than in the SF–424A. If you do, we will not count it against the page limit.

Attachments

You will upload attachments in *Grants.gov* using a single Other Attachments Form. Unless stated below, these attachments do not have page limits.

Proof of Accreditation

Submit proof of program accreditation from an accreditation agency recognized by the U.S. Department of Education, such as Commission of Collegiate Nursing Education (CCNE) and Accreditation Commission for Education in Nursing (ACEN).

Work Plan Chart

Attach a one-page work plan chart or timetable that summarizes the work plan in your project description, outlining your activities and outcomes. See merit review criteria for detailed instructions.

Proof of Nonprofit Status

If your organization is a nonprofit, you need to attach proof. We will accept any of the following:

- A copy of a current tax exemption certificate from the IRS.
- A letter from your state's tax department, attorney general, or another state official saying that your group is a nonprofit and that none of your net earnings go to private shareholders or others.
- A certified copy of your certificate of incorporation. This document must show that your group is a nonprofit.
- Any of the above for a parent organization. Also include a statement signed by an official of the parent group that your organization is a nonprofit affiliate.

Resumes and Position Descriptions

For key personnel, attach biographical sketches for filled positions. If a position is not filled, attach a short description of the position and qualifications. See additional instructions in merit review criteria.

Contractor and Consultant Resumes

For contractors or consultants, attach resumes or qualifications and their scope of work.

Audit Documentation

You must provide documentation of required audits. You can submit:

- Email confirmation from the Federal Audit Clearinghouse (FAC) showing that you submitted the audits.
- Face sheets from audit reports. You can find these on the FAC website (*https://www.fac.gov/*).

See audit requirements at 45 CFR part 75 subpart F (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-F*).

Standard Forms

You will need to complete some standard forms. Upload the standard forms listed below at *Grants.gov*. You can find them in the NOFO application package or review them and their instructions at *Grants.gov* Forms.

Forms	Submission requirement
Application for Federal Assistance (SF–424).	With application.
Budget Information for Non-Construction Programs (SF–424A).	With application.
Grants.gov Lobbying Form.	With application.
Disclosure of Lobbying Activities (SF–LLL).	If applicable, with the application.

IV. Step 4: Learn About Review and Award

Application Review

Initial Review

We review each application to make sure it meets basic requirements. We will not consider an application that:

- Is from an organization that does not meet all eligibility criteria.
- Is incomplete.
- Requests funding above the award ceiling shown in the funding range.
- Requests a period of performance longer than this NOFO allows.
- Is submitted after the deadline.

Also, we will not review any pages over the page limit.

Merit Review

The Review Committee reviews all applications that pass the initial review. The members use the criteria below.

We will send your authorized official an Executive Summary Statement within 30 days after we complete reviews. This statement will outline the strengths and weaknesses of your application.

Criteria

The panel will assess the quality of your responses and soundness of your approaches to the following project narrative sections.

Criterion	Total number of points = 100
1. Introduction and need for assistance	10
2. Project objectives, work plan, and approach	40
3. Program evaluation	30
4. Organizational capabilities, key personnel, and qualifications	15
5. Support Requested	5

1. Introduction and Need for Assistance

Maximum Points: 10

a. Present the comprehensive framework of your proposed program.

b. Include the purpose and background of your program.

c. Justify the overall need for your proposed program. Include the unmet AI/AN nursing workforce needs in AI/AN communities.

d. Explain how the proposed program will serve the IHS and Tribal health care programs as well as support to IHS scholarship recipients.

e. Describe the target population to receive IHS scholarships. We give funding preference to schools of nursing that recruit, retain, and graduate AI/AN veterans and veterans who have medical military experience.

f. Describe your overall approach to increase the number of registered nurses, nurse midwives, and nurse practitioners who deliver health care services to AI/AN. Include how you will increase the number of AI/AN nursing students recruited, retained, and graduated.

g. Describe the social determinants and health disparities that impact AI/AN communities. Discuss how these social determinants have historically affected access to AI/AN health care and have impacted AI/AN students' access to education specifically nursing education.

h. Describe relevance of the program relating the objectives to the purposes of this NOFO.

i. For current recipients, describe the differences between the current and proposed activities.

2. Project Objectives, Work Plan, and Approach

Maximum Points: 40

a. Project objectives

1. Clearly state specific, time-framed, measurable objectives for the goals related to the proposed program.

b. Work plan

1. In your attachments, include a work plan chart, with timelines, that describes fully and clearly how you will complete your proposed activities.

c. Approach

1. Recruiting students—You must describe:

a. Your strategy to attract pre-nursing students.

b. How your program will recruit AI/AN students who are veterans, including those with experience as emergency medical technicians, hospital corpsmen, paramedics, military medics, and licensed vocational or practical nurses.

2. Training and supporting student success. You must describe how you will:

a. Award IHS scholarships to nursing students.

b. Assist IHS program officials in their roles to support student job placement and to track each IHS scholarship recipient's service obligation.

c. Educate and train students in opioid addiction prevention, treatment, and recovery. Addressing the opioid crisis is an HHS priority.

3. Oversight and collaboration. You must describe:

a. Provide support services to psychology students to facilitate their success in the clinical psychology program as well as track their progress.

a. Collect students' BIA–4437 forms to verify whether students receiving tuition support in their program are members of eligible, federally recognized Tribes.

b. Assist the clinical psychologist with job placement at eligible Indian health sites and track their payback status to ensure they fulfill their service obligation.

c. Provide your students with clinical rotation in AI/AN health programs.

d. Provide stipends to undergraduate and graduate students to pursue a career in psychology.

e. Use existing university tutoring, counseling, and student support services, to the maximum extent feasible.

f. Provide career counseling, academic advice, plans to correct academic deficiencies, and other activities to assist student retention.

g. Educate and train students in opioid addiction prevention, treatment, and recovery. Addressing the opioid crisis is a Health and Human Services (HHS) priority.

h. Increase the skills of and provide continuing education to clinical psychologists at the graduate and undergraduate level who deliver health services to the AI/AN population.

i. Provide mechanisms and resources to increase psychology student enrollment, retention, and graduation.

4. Oversight and collaboration—You must describe how you will:

a. The challenges that you are likely to encounter or have been a challenge in designing and implementing the activities in your work plan, and the approaches that you will use to resolve them.

b. Your plan to sustain the project after the period of performance ends. Include the expected barriers to achieving self-sufficiency.

c. How you will establish or collaborate with existing IHS and Tribal programs and colleges to establish:

1. an agreement for clinical rotations;

2. a faculty exchange program to enhance cultural competency and faculty strength;

3. formal bridge programs agreements between Tribal colleges and universities to provide a program that increases the skills of, and provide continuing education to nurses, nurse practitioners, and nurse midwives.

3. Program Evaluation

Maximum Points: 30

a. Describe your evaluation plan. Include strategies for assessing the progress and outcomes of your project.

b. Link your evaluation plan to the objectives and purpose of this NOFO. Include how you will evaluate your successes and failures as well as identify and implement continuing improvements.

c. Describe the evaluation measures you will use to demonstrate how the program is meeting identified goals and objectives.

d. Describe you will collect, track, and report performance measures on a semi-annual basis and for periodic audit reports.

e. Explain how you will collect and manage student scholarship data.

f. Describe any potential obstacles for implementing the program performance evaluation, and how you will address those obstacles.

4. Organizational Capabilities, Key Personnel, and Qualifications

Maximum Points: 15

a. Provide information on your organization, philosophy, and practice methods. Describe how they will contribute to your ability to conduct program requirements and meet this program's purpose, objectives, and expectations.

b. List the key personnel who will work with the program. In your attachments, submit position

descriptions and resumes of program director and key staff with duties and experience.

c. Include nursing accreditation documentation. All schools of nursing that are associated with the project and have conferring degrees must be accredited.

d. Describe your organization's significant program activities and accomplishments over the past 5 years associated with the goals of this announcement. Describe major activities over the last 24 months.

e. Identify and summarize major project activities recently done during the project period. Include recruitment, retention, and support activities to student, graduate, and evaluation demonstrating performance measures.

f. Identify your experience with other similar projects, including the results of those projects. Include your prior experience with nurse recruitment programs.

5. Budget and Budget Justification

Maximum Points: 5

a. Clearly define the budget in your Budget Information for Non-Construction Programs (SF–424A).

b. In the Budget Narrative Form, provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment assigned to the grant. List equipment purchases necessary to conduct the project. See budget narrative. Be sure to include:

1. *Personnel costs:* You must identify a single program director. The program director must be a licensed registered nurse.

2. *Key support personnel:* Provide names, title, position description, salary, and fringe benefits. Administrative cost is limited to 8 percent of the award.

3. *Consultants:* Provide names, affiliations, and qualifications of each consultant, including expected rate of compensation, travel, per diem, and other related costs.

4. *Travel:* Name conferences or other recruitment events, airline tickets, lodging, per diem, booth, public transportation, or other related costs.

5. *Equipment:* Must be related to the objectives of the project, retained by recipient, used in accordance with the terms of the cooperative agreement award, and must comply with procurement requirements for Federal grant and cooperative agreements.

6. *Scholarships:* Must cover tuition, fees, books, stipend, and other related educational expenses. The proposed project must use IHS scholarship funds in a manner that will meet the needs of eligible AI/AN students. The budget narrative must indicate the number of students to receive scholarship for each year of the cooperative agreement and the amount of each scholarship per student.

Risk Review

Before making an award, we review the risk that you will not prudently manage Federal funds. We need to make sure you've handled any past Federal awards well and demonstrated sound business practices. We use *SAM.gov* Responsibility/Qualification (*https://sam.gov/content/entity-information*) to check this history for all awards likely to be over $250K. You can comment on your organization's information in *SAM.gov.* We will consider your comments before making a decision about your level of risk.

If we find a significant risk, we may choose not to fund your application or to place specific conditions on the award.

For more details, see 45 CFR 75.205 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-C/section-75.205*).

Selection Process

When making funding decisions, we consider:

- *Applicant program characteristics.* We give preference to programs that provide a preference to AI/AN students, train nurse midwives or nurse practitioners, and are interdisciplinary, including with medicine, pharmacy, dental, and behavioral health students.
- *Geographic IHS area.* If more than one university and college application is received from an IHS area, only one award will be made to that particular IHS area providing a DNP, MSN, or BSN program.
- *Private, public, and Tribal status.* At least two awards to public or private college or university, school of nursing which provides DNP, MSN, BSN, ADN (registered nurse, nurse practitioner, nurse midwife) degrees. At least three awards to a tribally controlled community college, school of nursing which provides BSN and ADN (registered nurse) degrees.
- *Merit review results.* These are key in making decisions but are not the only factor.
- *Statutory requirement.* Pursuant to 25 U.S.C. 1616e(e), one grant will be provided to the University of North Dakota.
- *Coverage.* The larger portfolio of agency-funded projects, including the diversity of project types and geographic distribution.
- *Applicant past performance.* We may choose not to fund applicants with management or financial problems.

We may:

- Fund applications in whole or in part.
- Fund applications at a lower amount than requested.
- Decide not to allow a prime recipient to subaward if they may not be able to monitor and manage subrecipients properly.
- Choose to fund no applications under this NOFO.

Award Notices

After we review and select applications for award, we will let you know the outcome.

Unsuccessful Applications

We will email you or write you a letter if your application is disqualified or unsuccessful.

Approved but Unfunded Applications

It is possible that we could approve your application, but do not have enough funds to reach it. If so, we will hold your application for one year. If funding becomes available during the year, we may reconsider funding.

Approved Applications

If you are successful, we will create a Notice of Award (NoA). You will need a GrantSolutions user account (*https://www.grantsolutions.gov/home/getting-started-request-a-user-account/*) to retrieve your NoA.

The NoA is the only official award document. The NoA tells you about the amount of the award, important dates, and the terms and conditions you need to follow. Until you receive the NoA, you do not have permission to start work.

V. Step 5: Submit Your Application

Application Submission and Deadlines

See find the application package to make sure you have everything you need.

Make sure you are current with *SAM.gov* and UEI requirements. See get registered (*https://sam.gov/content/entity-registration*). You will have to maintain your registration throughout the life of any award.

Application Deadline

You must submit your application by May 14, 2024, at 11:59 p.m. ET.

Grants.gov creates a date and time record when it receives the application. If you submit the same application more than once, we will accept the last on-time submission.

The grants management officer may extend an application due date based on emergency situations such as documented natural disasters or a verifiable widespread disruption of electric or mail service.

Application Submission

You must submit your application through *Grants.gov*. See get registered (*https://sam.gov/content/entity-registration*).

For instructions on how to submit in *Grants.gov*, see the Quick Start Guide for Applicants (*https://www.grants.gov/quick-start-guide/applicants*). Make sure that your application passes the *Grants.gov* validation checks or we may not get it. Do not encrypt, zip, or password protect any files. The link above will also help you learn how to create PDFs.

See Contacts & Support if you need help.

Exemptions

If you cannot submit through *Grants.gov*, you must request a waiver before the application due date. Send your waiver request to *DGM@ihs.gov*. Include clear justification for the need to deviate from the required application submission process. Failure to register in *SAM.gov* or *Grants.gov* in a timely way is not cause for a waiver. We will not accept applications outside of *Grants.gov* without an approved waiver.

We will email you if we approve your waiver. This notification will include submission instructions. If approved, we must receive your application by 5:00 p.m. ET on the application deadline.

Other Submissions

Intergovernmental Review

This NOFO is not subject to executive order 12372, Intergovernmental Review of Federal Programs. No action is needed.

Mandatory Disclosure

You must submit any information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. See Mandatory Disclosures, 45 CFR 75.113 (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-B/section-75.113*).

Send written disclosures to IHS at *DGM@ihs.gov* and to the Office of Inspector General at *grantdisclosures@oig.hhs.gov*. Include ''Mandatory Grant Disclosures'' in subject line.

Application Checklist

Make sure you have everything you need to apply:

Component	How to upload	Page limit
☐ Project Abstract	Use the Project Abstract Summary form	1 page.
☐ Project Narrative	Use the project Narrative Attachment form	25 pages.
☐ Budget Narrative	Use the Budget Narrative Attachment form	5 pages.
Attachments	Insert each in a single Other Attachments form	
☐ Tribal resolution		None.
☐ Work plan chart		1 page.
☐ Proof of nonprofit status		None.
☐ Indirect cost agreement		None.
☐ Resumes and position descriptions		None.
☐ Letter of support		None.
☐ Audit documentation		None.
Other Required Forms (3 total)	Upload using each required form	
☐ Application for Federal Assistance (SF–424)		None.
☐ Budget Information for Non-Construction Programs (SF–424A).		None.
☐ *Grants.gov* Lobbying Form		None.
☐ Disclosure of Lobbying Activities (SF–LLL)		None.

VIII. Step 6: Learn What Happens After Award

Post-Award Requirements and Administration

Administrative and National Policy Requirements

There are important rules you need to know if you get an award. You must follow:

- All terms and conditions in the Notice of Award.
- The regulations listed in 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (*https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75*).
- The HHS Grants Policy Statement (GPS) (*https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf*). This document has terms and conditions tied to your award. If there are any exceptions to the GPS, they will be listed in your Notice of Award.
- All Federal statutes and regulations relevant to Federal financial assistance, including those highlighted in the HHS Administrative and National Policy Requirements (*https://www.hhs.gov/sites/default/files/hhs-administrative-national-policy-requirements.pdf*).

Reporting

If you are successful, you will have to submit financial and performance reports and possibly reports on specific types of activities. Your NoA will outline the specific requirements and deadlines. To learn more about reporting, see:

- Performance Progress Reports
- Progress Report Requirements
- Financial Reporting

If your award includes funds for a conference, you must submit a report for all conferences.

If you do not submit your reports on time, we could:

- Suspend or terminate your award
- Withhold payments
- Move you to a reimbursement payment method
- Withhold future awards
- Take other enforcement actions
- Impose special award conditions if the situation continues

Non-Discrimination and Assurance

If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov*. You must also submit an Assurance of Compliance (HHS–690) (*https://www.hhs.gov/sites/default/files/form-hhs690.pdf*). To learn more, see the Laws and Regulations Enforced by the HHS Office for Civil Rights (*https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html*).

VI. Contacts and Support

Agency Contacts

1. Program and Eligibility, Eric Pinto, Senior Program Specialist, Email: *Eric.Pinto@ihs.gov,* Phone: 301–443–2544.

2. Grants Management and Financial, *DGM@ihs.gov.*

Grants.gov

Grants.gov provides 24/7 support. You can call 1–800–518–4726 or email *support@grants.gov.* Hold on to your ticket number.

If problems persist, contact the Office of Grants Management at *DGM@ihs.gov.* Please do so at least 10 days before the application due date.

SAM.gov

If you need help, you can call 866–606–8220 or live chat with the Federal Service Desk (*https://www.fsd.gov/gsafsd_sp*).

GrantSolutions

For help, please contact the GrantSolutions help desk at 866–577–0771, or by email at *help@grantsolutions.gov.*

Reference websites

- U.S. Department of Health and Human Services (HHS) (*https://www.hhs.gov/*)
- Division of Grants Management | Indian Health Service (IHS) (*https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding*)
- Grants Training Tools | Division of Grants Management (*ihs.gov*) (*https://www.ihs.gov/dgm/training1/*).
- Code of Federal Regulations (CFR) (*https://www.ecfr.gov/*)
- United States Code (U.S.C.) (*https://uscode.house.gov/*)

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–05103 Filed 3–8–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; CareerTrac

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Celia Katz, Project Clearance Liaison, FIC, NIH, 16 Center Drive, Bethesda, MD 20892 or call non-toll-free number (301) 594–7857 or email your request, including your address to: *celia.wolfman@nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: CareerTrac, 0925–0568, Expiration Date: 05/31/2024 REVISION, Fogarty International Center (FIC), National Institute of Environmental Health Sciences (NIEHS), National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) and National Institute of Minority Health Disparities (NIMHD), National Cancer Institute Center to Reduce Cancer Health Disparities (NCI/CRCHD), National Institutes of Health (NIH).

Need and Use of Information Collection: This purpose of this data collection system is to track, evaluate and report short and long-term outputs, outcomes and impacts of trainees involved in health research training programs-specifically tracking this for at least ten years following training by having Principal Investigators enter data after trainees have completed the program. The data collection system provides a streamlined, web-based application permitting principal investigators to record career achievement progress by trainee on a voluntary basis. FIC, NIEHS, NIDDK, NIMHD and NCI management will use this data to monitor, evaluate and adjust grants to ensure desired outcomes are achieved, comply with OMB Part requirements, respond to congressional inquiries, and as a guide to inform future strategic and management decisions regarding the grant program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 13,539.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
FIC Grantee	90	20	40/60	1200
NIEHS Grantee	1517	3	40/60	3034
NIMHD Grantee	10	100	40/60	667
NIDDK Grantee	170	4	40/60	453
NCI/CRCHD Grantee	264	22	40/60	3,872
Superfund Grantee	49	30	40/60	980
Trainees	5,000	1	40/60	3,333

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Total	7,100			13,539

Jane M. Lambert,

Project Clearance Liaison, National Institute of Environmental Health Sciences, National Institutes of Health.

[FR Doc. 2024–05030 Filed 3–8–24; 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 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Disease, Cognitive Aging, and Related Dementias.

Date: April 2, 2024.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, *weinersc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Gastroenterology.

Date: April 3, 2024.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Frederique Yiannikouris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3313, *frederique.yiannikouris@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–122: Research With Activities Related to Diversity (ReWARD).

Date: April 4, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827–4446, *bellingerjd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Overflow SEP: Innate Immunity and Inflammation.

Date: April 4, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Velasco Cimica, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cerebrovascular Disorders, Vascular Cognitive Impairment and Alzheimer's Disease.

Date: April 4, 2024.

Time: 10:30 a.m. to 3:00 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: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 22–204: Development of Animal Models and Related Materials for HIV/AIDS Research.

Date: April 4, 2024.

Time: 1:00 p.m. to 3:00 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: Jonathan Michael Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *jonathan.peterson@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: March 5, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05079 Filed 3–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR–20–117: Maximizing Investigators' Research Award for Early-Stage Investigators, March 25, 2024, 10:00 a.m. to March 26, 2024, 08:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 04, 2024, 89 FR 15597, Doc 2024–04445.

This meeting is being amended to change the panel name to ''PAR–23–145: Maximizing Investigators' Research Award for Early-Stage Investigators''. The meeting is closed to the public.

Dated: March 5, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05078 Filed 3–8–24; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Emerging Imaging Technologies and Applications.

Date: March 26, 2024.

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: Zheng ''Jane'' Li, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, 301–594–3385, *zheng.li3@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: March 5, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05075 Filed 3–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Inquiries related to this licensing opportunity should be directed to: Suna Gulay French, Ph.D., Technology Transfer Manager, NCI, Technology Transfer Center, Email: *suna.gulay@nih.gov* or Phone: 240–276–7424.

SUPPLEMENTARY INFORMATION:

NIH Reference Number: E–153–2016–0.

Title: T-Cell Immunotherapy that Targets Aggressive Epithelial Tumors.

Intellectual Property

US Provisional Application 62/327,529 filed April 26, 2016
PCT Application PCT/US2017/027865 filed April 17, 2017
US Patent 11,352,410 issued June 7, 2022
European Patent 3448882 issued November 24, 2021, validated in Switzerland, Germany, Belgium, Denmark, Spain, Finland, France, United Kingdom, Ireland, Italy, The Netherlands, Norway, Sweden
Australian Patent Application 2017258745 filed October 19, 2018
Canadian Patent Application 3021898 filed April 17, 2017

Technology Summery

Metastatic cancers cause up to 90% of cancer deaths, yet few treatment options exist for patients with metastatic disease. Adoptive transfer of T cells that express tumor-reactive T-cell receptors (TCRs) has been shown to mediate regression of metastatic cancers in some patients. Unfortunately, identification of antigens expressed solely by cancer cells and not normal tissues has been a major challenge for the development of T-cell based immunotherapies. Thus, it is essential to find novel target antigens differentially expressed in cancer versus normal tissues.

Inventors at the National Cancer Institute (NCI) have developed a TCR that specifically targets the Kita-Kyushu Lung Cancer Antigen 1 (KK–LC–1) 52–60 epitope. KK–LC–1 antigen (encoded by the CT83 gene) is highly expressed by several common and aggressive epithelial tumor types. Importantly, KK–LC–1 is expressed at very low levels in normal tissues and not in those tissues vital for survival. This expression profile makes KK–LC–1 an attractive target for T-cell based, anti-cancer therapies.

Researchers at the NCI seek licensing and/or co-development research collaborations for T-cell immunotherapy that targets KK–LC–1 for use in the treatment of epithelial cancers.

Therapeutic Area(s): Cancer.

Competitive Advantages: Differential expression profile of KK–LC–1 suggests that therapy with a specific KK–LC–1 TCR could be cancer-specific and would not damage normal tissues; The repertoire of targetable epithelial antigens for TCR–T cell therapy is larger than for CAR–T cells; Increased sensitivity may improve tumor cell detection and killing versus CAR–T cells, due to lower epitope density required for activation;

Higher avidity and lower affinity could result in each TCR–T cell destroying numerous antigen-presenting cancer cells; Thousands of cancer patients each year with otherwise untreatable disease may be eligible for immunotherapy with this TCR.

Achieving expeditious commercialization of federally funded research and development is consistent with the goals of the Bayh-Dole Act, codified as 35 U.S.C. 200–212 and 37 CFR 404.4.

Development Stage: Clinical Phase I.

Dated: March 5, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024–05038 Filed 3–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0050]

National Navigation Safety Advisory Committee Meeting; April 2024 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meetings.

SUMMARY: The National Navigation Safety Advisory Committee (Committee) will conduct a series of meetings over 2 days in Bronx, New York to discuss matters relating to maritime collisions, allisions, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems. All meetings will be open to the public.

DATES:

Meetings: The Committee will hold meetings on Tuesday, April 2, and Wednesday, April 3, 2024, from 8 a.m. to 5:30 p.m. Eastern Daylight Time (EDT). Please note these meetings may adjourn early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meetings, submit your written comments no later than March 19, 2024.

ADDRESSES: The meetings will be held at the Maritime Academic Center at the State University of New York Maritime College. Additional information about the facility can be found at: *https://www.sunymaritime.edu/aboutpublic-programsconference-services/conference-and-meeting-rentalsme College*. The meetings will also be held virtually. To join the virtual meetings, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m., EDT on March 29, 2024, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come first-served basis.

Pre-registration Information: Pre-registration is required for attending virtual meetings. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Navigation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Lieutenant Ryan Burk at *Ryan.B.Burk@uscg.mil* or call (571) 613–3779 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than March 19, 2024. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG–2024–0050 in the search box and click ''Search''. Next, look for this document in the Search Results column, and click on it.

If your material cannot be submitted using *https://www.regulations.gov* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0050. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice, found via link on the homepage of *https://www.regulations.gov*. For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Burk, Alternate Designated Federal Officer of the National Navigation Safety Advisory Committee, 2703 Martin Luther King Jr Ave. SE, Stop 7418, Washington, DC 20593–7418, telephone (571) 613–3779, or email *Ryan.B.Burk@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The National Navigation Safety Advisory Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15107. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The Committee provides advice to the Secretary of Homeland Security via the Commandant of the U.S. Coast Guard on matters relating to maritime collisions, allisions, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems.

Agenda

Day 1

The agenda for the April 2, 2024, meeting is as follows:

(1) Call to order.

(2) Introduction.

(3) Remarks by the Chairman and the Designated Federal Officer (DFO).

(4) Roll call of Committee members and determination of a quorum.

(5) Presentations.

(a) Update on electronic charts and navigation equipment carriage requirements.

(b) Update on published NVICs.

(c) The Port Access Route Study (PARS) to fairway process.

(6) Presentation of Tasks. Following the above presentations, the Committee Chair and the DFO will form subcommittees to discuss the following task statements:

(a) *Task Statement 24–01:* International Maritime Organization (IMO) Routing Measures on the Outer Continental Shelf (OCS).

(b) *Task Statement 24–02:* Safety Zone Pilot Program and U.S. Coast Guard Authorities.

(c) *Task Statement 24–03:* How to best use Automatic Identification System capabilities to ensure safe navigation in and around Offshore Renewable Energy Installation sites.

(7) Public comment period.

(8) Report by Subcommittees on accomplishments.

(9) Adjournment of meeting.

Day 2

The agenda for the April 3, 2024, meeting is as follows:

(1) Call to order.

(2) Introduction.

(3) Remarks by the Chair and the DFO.

(4) Roll call of Committee members and determination of a quorum.

(5) Subcommittee discussions continued from Tuesday, April 2, 2024.

(6) Public comment period.

(7) Subcommittee reports presented to the Committee.

(8) Schedule next meeting date.

(9) Closing remarks by the Chairman and the DFO.

(10) Adjournment of meeting.

A copy of all meeting documentation will be available, by March 19, 2024, by going to the U.S. Coast Guard Homeport website, *https://homeport.uscg.mil,* selecting the Missions tab, and navigating to the Federal Advisory Committees section. Alternatively, you may contact Lieutenant Ryan Burk as noted in the **FOR FURTHER INFORMATION CONTACT** section.

A public comment period will be held during each Committee meeting concerning matters being discussed. Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may end before the period allotted following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Michael D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2024–05090 Filed 3–8–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado: El Paso (FEMA Docket No.: B–2391).	Unincorporated areas of El Paso County (23–08–0623X).	Cami Bremer, Chair, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Building Department, Floodplain Management Office, 2880 International Circle, Colorado Springs, CO 80910.	Jan. 29, 2024 ..	080059
Florida:					
Monroe (FEMA Docket No.: B–2395).	City of Marathon (23–04–5034P).	The Honorable Luis Gonzalez, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	City Hall, 9805 Overseas Highway, Marathon, FL 33050.	Feb. 5, 2024	120681
Monroe (FEMA Docket No.: B–2386).	Unincorporated areas of Monroe County (23–04–4892P).	The Honorable Craig Cates, Mayor, Monroe County Board Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 26, 2024 ..	125129
Monroe (FEMA Docket No.: B–2386).	Unincorporated areas of Monroe County (23–04–4894P).	The Honorable Craig Cates, Mayor, Monroe County Board Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 26, 2024 ..	125129
Monroe (FEMA Docket No.: B–2386).	Unincorporated areas of Monroe County (23–04–4895P).	The Honorable Craig Cates, Mayor, Monroe County Board Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 26, 2024 ..	125129
Pasco (FEMA Docket No.: B–2386).	Unincorporated areas of Pasco County (23–04–2400P).	Jack Mariano, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.	Feb. 8, 2024	120230
Polk (FEMA Docket No.: B–2395).	Unincorporated areas of Polk County (23–04–2443P).	Bill Beasley, Manager, Polk County, 330 West Church Street, Bartow, FL 33830.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Feb. 1, 2024	120261

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Volusia (FEMA Docket No.: B–2386).	City of Deltona (23–04–1244P).	The Honorable Santiago Avila, Jr., Mayor, City of Deltona, 2345 Providence Boulevard, Deltona, FL 32725.	City Hall, 2345 Providence Boulevard, Deltona, FL 32725.	Feb. 9, 2024	120677
Volusia (FEMA Docket No.: B–2386).	Unincorporated areas of Volusia County (23–04–1244P).	George Recktenwald, Volusia County Manager, 123 West Indiana Avenue, Deland, FL 32720.	Volusia County Thomas C. Kelly Administration Center, 123 West Indiana Avenue, Deland, FL 32720.	Feb. 9, 2024	125155
Massachusetts:					
Essex (FEMA Docket No.: B–2395).	City of Gloucester (22–01–0881P).	The Honorable Greg Verga, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930.	City Hall, 3 Pond Road, 2nd Floor, Gloucester, MA 01930.	Feb. 2, 2024	250082
Essex (FEMA Docket No.: B–2391).	City of Haverhill (22–01–1004P).	The Honorable James J. Fiorentini, Mayor, City of Haverhill, 4 Summer Street, Room 100, Haverhill, MA 01830.	Engineering Division, 4 Summer Street, Room 300, Haverhill, MA 01830.	Feb. 2, 2024	250085
Essex (FEMA Docket No.: B–2391).	Town of Groveland (22–01–1004P).	Daniel MacDonald, Chair, Town of Groveland Board of Selectmen, 183 Main Street, Groveland, MA 01834.	Economic Development Planning and Conservation Department, 183 Main Street, Groveland, MA 01834.	Feb. 2, 2024	250083
Essex (FEMA Docket No.: B–2391).	Town of West Newbury (22–01–1004P).	Angus Jennings, Town of West Newbury Manager, 381 Main Street, West Newbury, MA 01985.	Town Hall, 381 Main Street, West Newbury, MA 01985.	Feb. 2, 2024	250108
South Carolina:					
Greenville (FEMA Docket No.: B–2386).	Unincorporated areas of Greenville County (23–04–1969P).	Joseph Kernell, Greenville County Administrator, 301 University Ridge, Suite N–4000, Greenville, SC 29601.	Greenville County Square, 301 University Ridge, Suite S–3100, Greenville, SC 29601.	Jan. 29, 2024 ..	450089
Jasper (FEMA Docket No.: B–2391).	City of Hardeeville (22–04–2011P).	The Honorable Harry Williams, Mayor, City of Hardeeville, 205 Main Street, Hardeeville, SC 29927.	City Hall, 205 Main Street, Hardeeville, SC 29927.	Feb. 1, 2024	450113
Tennessee: Obion (FEMA Docket No.: B–2391).	Unincorporated areas of Obion County (23–04–1092P).	The Honorable Steve Carr, Mayor, Obion County, 316 South 3rd Street, Union City, TN 38261.	Obion County Department of Emergency Management, 1700 North 5th Street, Union City, TN 38261.	Jan. 25, 2024 ..	470361
Texas:					
Bexar, Comal and Kendall (FEMA Docket No.: B–2395).	City of Fair Oaks Ranch (21–06–2766P).	Scott M. Huizenga, Interim City Manager, City of Fair Oaks Ranch, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Public Works and Engineering Services Department, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Feb. 12, 2024 ..	481644
Dallas (FEMA Docket No.: B–2395).	City of Cedar Hill (23–06–1951P).	The Honorable Stephen Mason, Mayor, City of Cedar Hill, 285 Uptown Boulevard, Cedar Hill, TX 75104.	City Hall, 285 Uptown Boulevard, Cedar Hill, TX 75104.	Feb. 12, 2024 ..	480168
Dallas (FEMA Docket No.: B–2395).	City of DeSoto (23–06–1951P).	The Honorable Rachel L. Proctor, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, TX 75115.	Engineering Department, 211 East Pleasant Run Road, DeSoto, TX 75115.	Feb. 12, 2024 ..	480172
Dallas	City of Duncanville (23–06–1951P).	The Honorable Barry L. Gordon, Mayor, City of Duncanville, P.O. Box 380280, Duncanville, TX 75138.	City Hall, 203 East Wheatland Road, Duncanville, TX 75116.	Feb. 12, 2024 ..	480173
Denton (FEMA Docket No.: B–2395).	City of Denton (23–06–0680P).	The Honorable Gerard Hudspeth, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Engineering Services Department, 401 North Elm Street, Denton, TX 76201.	Feb. 2, 2024	480194
Denton (FEMA Docket No.: B–2391).	City of The Colony (23–06–1976P).	The Honorable Richard Boyer, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	Jan. 29, 2024 ..	481581
Denton (FEMA Docket No.: B–2395).	City of Aubrey (23–06–1953P).	The Honorable Chris Rich, Mayor, City of Aubrey, 107 South Main Street, Aubrey, TX 76227.	City Hall, 107 South Main Street, Aubrey, TX 76227.	Feb. 12, 2024 ..	480776
Denton (FEMA Docket No.: B–2395).	Unincorporated areas of Denton County (23–06–1953P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	Feb. 12, 2024 ..	480774
Hays (FEMA Docket No.: B–2395).	Unincorporated areas of Hays County (23–06–0869P).	The Honorable Ruben Becerra, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County Development Services Department, 2171 Yarrington Road, Suite 100, Kyle, TX 78640.	Feb. 1, 2024	480321
Johnson (FEMA Docket No.: B–2395).	City of Burleson (23–06–0273P).	The Honorable Chris Fletcher, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	City Hall, 141 West Renfro Street, Burleson, TX 76028.	Feb. 12, 2024 ..	485459
Travis (FEMA Docket No.: B–2395).	Unincorporated areas of Travis County (22–06–2280P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	Feb. 12, 2024 ..	481026
Virginia:					
Loudoun (FEMA Docket No.: B–2386).	Town of Leesburg (23–03–0239P).	Kaj Dentler, Manager, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Town Hall, 25 West Market Street, Leesburg, VA 20176.	Jan. 29, 2024 ..	510091
Loudoun (FEMA Docket No.: B–2386).	Unincorporated areas of Loudoun County (23–03–0239P).	Tim Hemstreet, Loudoun County Administrator, 1 Harrison Street, Southeast, 5th Floor, Leesburg, VA 20175.	Loudoun County Government Center, 1 Harrison Street Southeast, 3rd Floor, MSC #60, Leesburg, VA 20175.	Jan. 29, 2024 ..	510090

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
West Virginia: Tucker (FEMA Docket No.: B–2401).	Unincorporated areas of Tucker County (23–03–0296P).	Michael Rosenau, President, Tucker County Commission, 211 1st Street, Suite 307, Parsons, WV 26287.	Tucker County Floodplain Administration, 211 1st Street, Suite 1, Parsons, WV 26287.	Feb. 8, 2024	540191

[FR Doc. 2024–05092 Filed 3–8–24; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2414]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before June 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2414, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Chickasaw County, Mississippi and Incorporated Areas Project: 19–04–0021S Preliminary Date: June 2, 2023	
City of Okolona	City Hall, 215 West Main Street, Okolona, MS 38860.

Community	Community map repository address
Unincorporated Areas of Chickasaw County	Chickasaw County Emergency Management, 1 Pinson Square, Houston, MS 38851.
Clay County, Mississippi and Incorporated Areas Project: 19–04–0021S Preliminary Date: June 2, 2023	
Unincorporated Areas of Clay County	Clay County Courthouse, 365 Court Street, West Point, MS 39773.
Itawamba County, Mississippi and Incorporated Areas Project: 19–04–0021S Preliminary Date: June 2, 2023	
Town of Tremont	Town Hall, 12761 Highway 23 North, Tremont, MS 38876.
Unincorporated Areas of Itawamba County	Itawamba County Courthouse, 201 West Main Street, Fulton, MS 38843.

[FR Doc. 2024–05094 Filed 3–8–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2023–0015]

RIN 1653–ZA44

Employment Authorization for Venezuelan F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Crisis in Venezuela

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Venezuela, regardless of country of birth (or individuals having no nationality who last habitually resided in Venezuela), and who are experiencing severe economic hardship as a direct result of the crisis in Venezuela. The Secretary is taking action to provide relief to these Venezuelan students who are in lawful F–1 nonimmigrant student status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This action is effective March 11, 2024, through September 10, 2025.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Venezuela regardless of country of birth (or individuals having no nationality who last habitually resided in Venezuela), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the situation in Venezuela. The original Notice that was prompted by emergent circumstances, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on April 22, 2021, was effective from April 22, 2021, until September 9, 2022. *See* 86 FR 21328 (Apr. 22, 2021). A subsequent Notice provided for an 18-month extension of the original Notice from September 10, 2022, through March 10, 2024. See 87 FR 55017 (Sept. 8, 2022). Effective with this publication, suspension of the employment limitations is available through September 10, 2025, for those who are in lawful F–1 nonimmigrant status on the date of publication of this Notice. DHS will deem an F–1 nonimmigrant student granted employment authorization through this Notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F). Those covered by the Notice ending on March 10, 2024 (*see* 87 FR 55017), will receive an extension of Special Student Relief under this Notice through September 10, 2025.

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Venezuela regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the situation in Venezuela.

This notice applies to F–1 nonimmigrant students in an approved

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of Sept. 10, 2025, provided the student satisfies the minimum course load requirements in this notice.

private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Venezuelan F–1 nonimmigrant students experiencing severe economic hardship due to the situation in Venezuela. Based on its review of country conditions in Venezuela and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Venezuela to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

Venezuela continues to face a severe humanitarian emergency due to political and economic crises that impact access to food, medicine, healthcare, water, electricity, and fuel, has led to human rights abuses, high levels of poverty, and high levels of crime and violence.

Political Repression and Human Rights

''In Venezuela, many channels for political dissent are closed, with authorities restricting enjoyment of civil liberties and prosecuting perceived opponents without regard for due process.'' [2] [3] The UN Human Rights Council's Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (IIFFM) found in its September 2022 report, ''Venezuela's military and civilian intelligence agencies function as well-coordinated and effective structures in the implementation of a plan'' to ''repress dissent.''

Economic Collapse

Venezuela is struggling with a persistent economic conditions that has limited the country's ability to provide basic goods.[4] In April 2023, Venezuela's economy was showing some signs of recovery, however, it is still in a grim condition.[5] In a report covering the period from May 2022 through April 2023, the U.N. Office of the High Commissioner for Human Rights (OHCHR) noted that while economic growth, which occurred in 2022, ''would bring hope for improved economic prospects, persistent challenges and other factors continued to negatively affect essential public services, transport, education, and health.'' [6]

In the Inter-American Commission on Human Rights (IACHR) 2022 report, the IACHR noted ''the high rates of poverty and inequality in the country, in which there are estimates that more than 90 percent of the population lives in poverty.'' [7] The same report stated that, as of March 2022, an estimated 94.5 percent of the Venezuelan population would not earn an income that would cover basic items like food, housing, health, education, transportation, and clothing.[8]

Crime and Insecurity

In May 2022, the U.S. Department of State concluded that Venezuela had one of the highest rates of violent deaths in the world.[9] Additionally, ''Venezuelans face physical insecurity and violence from several sources, including irregular armed groups, security forces, and organized gangs.'' [10] Exacerbating this issue is corruption in Venezuela. InSight Crime has reported that ''criminal groups and corrupt state actors together form a hybrid state that combines governance with criminality, and where illegal armed groups act at the service of the state, while criminal networks form within it.'' [11] Human trafficking remains a serious concern. Traffickers exploit and subject Venezuelans, including those fleeing the country, to egregious forms of exploitation, including sex trafficking and forced labor.[12] Members of non-state armed groups that operate in the country with impunity subject Venezuelans to forced labor and forced criminality, and recruit and use child soldiers.[13]

Health Crisis

Various sources have referred to the severe problems with the health system in Venezuela, including the IACHR, Human Rights Watch, and the Congressional Research Service (CRS).[14] The Associated Press (AP) reported in March that Venezuela's healthcare system had all but collapsed prior to the COVID–19 pandemic.[15] Likewise, in its

[2] Freedom House, Freedom in the World 2023—Venezuela, Mar. 10, 2023, available at *https://freedomhouse.org/country/venezuela/freedom-world/2023* (last visited Jul. 18, 2023).

[3] Inter-American Commission on Human Rights (IACHR), Annual Report 2022—Chapter IV.B—Venezuela, p.700, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited Jul. 19, 2023).

[4] Vivian Sequera, Banana fungus may worsen hunger crisis in Venezuela, Reuters, May 10, 2023, available at *https://www.reuters.com/world/americas/banana-fungus-may-worsen-hunger-crisis-venezuela-2023-05-10/* (last visited July 7, 2023).

[5] The Economist, Nicolás Maduro, Venezuela's autocrat, is winning, Apr. 25, 2023, available at *https://web.archive.org/web/20230531114303/https://www.economist.com/the-americas/2023/04/25/nicolas-maduro-venezuelas-autocrat-is-winning* (last visited July 10, 2023).

[6] Office of the High Commissioner for Human Rights (OHCHR), Situation of human rights in the Bolivarian Republic of Venezuela—Report of the United Nations High Commissioner for Human Rights, p.2, July 4, 2023, available at *https://reliefweb.int/report/venezuela-bolivarian-republic/situation-human-rights-bolivarian-republic-venezuela-report-united-nations-high-commissioner-human-rights-ahrc5354-advance-unedited-version* (last visited July 12, 2023); Isayen Herrera and Frances Robles, Ferraris and Hungry Children: Venezuela's Socialist Vision in Shambles, The New York Times, Mar. 21, 2023, available at *https://web.archive.org/web/20230401201402/https:/www.nytimes.com/2023/03/21/world/americas/venezuela-economy-wealth-gap.html* (last visited July 12, 2023); Observatorio Venezolano de Conflictividad Social (OVCS), Conflictividad Social—Venezuela Anual 2022 [Social Conflict—Venezuela Annual 2022], p.2, Feb. 2023, available at *https://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2023/02/INFORMEOVCS-ANUAL2022.pdf* (last visited July 12, 2023).

[7] Inter-American Commission on Human Rights (IACHR), Annual Report 2022—Chapter IV.B—Venezuela, p.705, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 10, 2023).

[8] Inter-American Commission on Human Rights (IACHR), Annual Report 2022—Chapter IV.B—Venezuela, p.705, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 10, 2023).

[9] Overseas Security Advisory Council (OSAC), Venezuela Country Security Report, U.S. Department of State, May 10, 2022, available at *https://www.osac.gov/Content/Report/34f99e62-2161-412d-bfeb-1e752539f6bf* (last visited Jul. 19, 2023).

[10] Freedom House, Freedom in the World 2023—Venezuela, Mar. 10, 2023, available at *https://freedomhouse.org/country/venezuela/freedom-world/2023* (last visited Jul. 18, 2023).

[11] Venezuela Investigative Unit, Rise of the Criminal Hybrid State in Venezuela, InSight Crime, p.5, Jul. 2023, available at *https://insightcrime.org/wp-content/uploads/2023/07/Rise-of-the-Criminal-Hybrid-State-in-Venezuela-InSight-Crime-1.pdf* (last visited Jul. 19, 2023).

[12] U.S. Dep't. of State, 2023 Trafficking in Persons Report: Venezuela, June 15, 2023, available at *https://www.state.gov/reports/2023-trafficking-in-persons-report/venezuela/* (last visited Sep. 25, 2023).

[13] *Id.*

[14] Inter-American Commission on Human Rights (IACHR), Annual Report 2022—Chapter IV.B—Venezuela, p.674, 706, 708, 709, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 12, 2023); Human Rights Watch, World Report 2023: Venezuela, Jan. 13, 2023, available at *https://www.hrw.org/world-report/2023/country-chapters/venezuela* (last visited July 12, 2023); Clare Ribando Seelke, Rebecca M. Nelson, Rhoda Margesson, & Phillip Brown, Venezuela: Background and U.S. Relations, Congressional Research Service (CRS), p.11, Dec. 6, 2022, available at *https://crsreports.congress.gov/product/pdf/R/R44841* (last visited July 12, 2023).

[15] Regina Garcia Cano, Governments pledge money, attention to Venezuela's crisis, The

Continued

2022 annual report, the IACHR acknowledged that while the COVID–19 pandemic ''has had significant impacts on the health sector and the population, the serious affectations of the system preceded the health emergency.'' [16]

According to a July 2023 OHCHR report, health centers in Venezuela frequently report issues caused by the underfunded healthcare system, such as structural integrity issues of facilities and staffing, as well as gaps in critical infrastructure leading to regular blackouts and water shortages.[17] Furthermore, in its 2022 annual report, the IACHR reported that 98 percent of the hospitals in Venezuela lacked essential supplies of medicines and are frequently experiencing failures in laboratories, reagents, and wards. Because of this, the IACHR estimated that only between 3 and 10 percent of the hospitals had the essential medical and surgical materials to adequately treat patients.[18]

Food Insecurity and Environmental Concerns

In a humanitarian response plan published in 2023, the Food and Agriculture Organization of the United Nations (FAO) identified food insecurity as the most immediate challenge for the Venezuelan populations.[19] Human Rights Watch also stated in its 2022 report that HumVenezuela, an independent platform by civil society organizations monitoring the humanitarian emergency, reported in March 2022 that the majority of Venezuelans face hardship when attempting to access food, with 10.9 million Venezuelans undernourished or chronically hungry.[20] It is also estimated that 4.3 million are deprived of food, sometimes going days without eating.[21] Moreover, the IACHR noted in its 2022 annual report that ''32 percent of children live in a situation of chronic malnutrition.'' [22]

Since May 26, 2023, as hurricane season began, Venezuela has experienced heavy rains which resulted in flooding that affected several areas in Venezuela.[23] Reports of the damage caused by the heavy rains includes 5,100 people affected with damage to houses and blockages in the drainage system in the state of Portuguesa.[24] In another area, Delta Amacuro, around 7,500 people have been affected by the 2023 floods.[25]

As of January 5, 2024, 3,950 F–1 nonimmigrant students from Venezuela are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the situation in Venezuela, affected students whose primary means of financial support comes from Venezuela may need to be exempt from the normal student employment requirements to continue their studies in the United States. The situation has made it unfeasible for many students to safely return to Venezuela for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Venezuelan citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of

Associated Press, Mar. 17, 2023, *https://apnews.com/article/venezuela-migration-crisis-us-united-nations-805873048d2b0532bfbe53428f4ed2aa* (last visited July 12, 2023).

[16] Inter-American Commission on Human Rights (IACHR), Annual Report 2022—Chapter IV.B—Venezuela, p.705, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 12, 2023).

[17] Office of the High Commissioner for Human Rights (OHCHR), Situation of human rights in the Bolivarian Republic of Venezuela: Report of the United Nations High Commissioner for Human Rights, p.3, July 4, 2023, available at *https://reliefweb.int/report/venezuela-bolivarian-republic/situation-human-rights-bolivarian-republic-venezuela-report-united-nations-high-commissioner-human-rights-ahrc5354-advance-unedited-version* (last visited July 13, 2023).

[18] Inter-American Commission on Human Rights (IACHR), Annual Report 2022: Chapter IV.B: Venezuela, p.708, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 13, 2023).

[19] Food and Agriculture Organization of the United Nations (FAO), The Bolivarian Republic of Venezuela: Humanitarian Response Plan 2022–2023, p.1, 2023, available at *https://www.fao.org/3/cc6775en/cc6775en.pdf* (last visited July 14, 2023).

[20] Human Rights Watch, World Report 2023: Venezuela, Jan. 13, 2023, available at *https://www.hrw.org/world-report/2023/country-chapters/venezuela* (last visited July 14, 2023).

[21] *Id.*

[22] Inter-American Commission on Human Rights (IACHR), Annual Report 2022: Chapter IV.B: Venezuela, p.709, Apr. 20, 2023, available at *https://www.oas.org/en/iachr/docs/annual/2022/Chapters/9-IA2022_Cap_4B_VE_EN.pdf* (last visited July 14, 2023).

[23] ACAPS, ACAPS Anticipatory Note: Venezuela: Anticipation of flooding, 20 July 2023, July 20, 2023, available at *https://reliefweb.int/report/venezuela-bolivarian-republic/acaps-anticipatory-note-venezuela-anticipation-flooding-20-july-2023* (last visited Sept. 19, 2023).

[24] *Id.*

[25] *Id.*

Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[26]

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [27] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

[26] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of Sept. 10, 2025, provided the student satisfies the minimum course load requirements in this notice.

[27] *See* 8 CFR 214.2(f)(6).

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Venezuela regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the situation in Venezuela.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the situation in Venezuela).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Venezuela enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8CFR214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Venezuela enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[28]

[28] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in

Continued

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the situation in Venezuela. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time on-campus employment when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [29] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[30]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [31] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). The authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[32]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the situation in Venezuela.[33] Filing instructions are located at *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c) (Oct. 1, 2020).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the situation in Venezuela.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[34]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

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a ''full course of study,'' see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of Sept. 10, 2025, provided the student satisfies the minimum course load requirements in this notice.

[29] See 8 CFR 214.2(f)(6).

[30] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[31] *See* 8 CFR 214.2(f)(6).

[32] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[33] *See* 8 CFR 274a.12(c)(3)(iii).

[34] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of Sept. 10, 2025, provided the student satisfies the minimum course load requirements in this notice.

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [35] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Venezuela, regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela), and is experiencing severe economic hardship as a direct result of the situation in Venezuela, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; [36] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the situation in Venezuela.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' [37] Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[38] under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS Notice designating Venezuela for TPS. *See* ''Extension and Redesignation of Venezuela for Temporary Protected Status,'' 88 FR 68130 (Oct. 3, 2023). All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Venezuela for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, as long as the F–1 nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [39] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO's required entry in SEVIS and issuance of an updated Form I–20, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the situation in Venezuela. The DSO will then verify and update the student's

[35] *See* 8 CFR 214.2(f)(6).

[36] 8 CFR 214.2(f)(5)(v).

[37] Guidance for direct filing addresses can be found here: *https://www.uscis.gov/i-765-addresses.*

[38] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited May 10, 2023).

[39] *See* 8 CFR 214.2(f)(6).

record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until September 10, 2025,[40] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Venezuela. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the situation in Venezuela must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control Number 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–04820 Filed 3–8–24; 4:15 pm]

BILLING CODE 9111–28–P

[40] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of Sept. 10, 2025, provided the student satisfies the minimum course load requirements in this notice.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–25]

Privacy Act of 1974; System of Records

AGENCY: Office of Multi-Family Housing Office, Office of Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Multifamily Housing Office, is modifying the system of records notice (SORN) titled ''Active Partners Performance System (APPS)''. The Active Partners Performance System (APPS) handles web-based applications for the Business Relationships and Support Contracts Division. The modification makes clarifying changes to migration of SORN to a new template, the Privacy Office contact information, system location, categories of individuals, routine uses and retrieval of records. The updates are explained in the ''Supplementary Section'' of this notice. This Notice supersedes the previously published on.

DATES: Comments will be accepted on or before April 10, 2024. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number 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 docket to read background documents or comments received go to *http://www.regulations.gov* .

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD, Office of Multifamily Housing Office, maintains the APPS system. HUD is publishing this notice to include these changes reflecting the modified items listed below:

1. *System Location:* Updated to reflect the current locations, which was previously in South Charleston, WV.

2. *Categories of Individuals covered by the System:* Updated to reflect records collected to a comprehensive list of participants to include general public and their participation in HUD programs.

3. *Routine Uses for Records Maintained in the System:* Updated to bring it to current applicable routine uses. Routine Use (1) was removed as obsolete. Routine Use (2) was removed to comply with OMB Circular A–108. Routine Use (3) was updated to comply with OMB M–17–12. Routine Use (4) was removed as redundant of exception (b)(6) of the Privacy Act and replaced by

the second routine use required by OMB M–17–12. Routine Use (5) was moved to what is now Routine Use (1) and replaced with a routine use to allow for disclosures for law enforcement purposes. Routine Use (6) is added to provide for litigation needs. Routine Use (6) is added to allow HUD to receive effective representation during litigation (such as to the Department of Justice). Routine Use (7) was added to fulfill responsibilities in in 5 U.S.C. 552(h), to review administrative agency policies. Routine Use (7) was added to allow for contractor support.

4. *Policies and Practices for Retrieval of Records:* Removed the ''submission ID'' and replaced it with ''Social Security Number''. Submission ID brings up the 2530 submission whereas if you must retrieve individuals, you should use SSN.

SYSTEM NAME AND NUMBER:

Active Partners Performance System (APPS), HUD/MFH–01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

HUD Headquarters at 451 Seventh Street SW, Room 6176, Washington, DC 20410–0001. APPS is maintained and backed up on servers housed at the National Center for Critical Information Processing and Storage located at 9325 Cypress Loop Road, Stennis Space Center, MS 39529.

SYSTEM MANAGER:

Devasia Karimpanal, Program Specialist, Office of Housing, Business Relationships and Support Contracts Division, HUD Headquarters, 451 7th Street SW, Rm. 6176, Washington, DC 20410–0001, telephone number (202) 402–7682.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of Housing and Urban Development Act, 79 Stat. 670, (42 U.S.C. 3535(d)). HUD is authorized to collect the Social Security Number (SSN) by section 165(a) of the Housing and Community Development Act of 1987, Public Law 100–242 (42 U.S.C. 3543).

PURPOSES OF THE SYSTEM:

APPS automates the submission and review of HUD previous participation certification process (Form HUD–2530), which initiates the review and approval process for industry entities who would participate in a HUD project. The data collected through the HUD–2530 process is used by HUD employees to assess applicant's suitability to participate in HUD projects considering their track record in carrying out financial, legal, and contractual obligations in previous projects, in a satisfactory and timely manner. An approved HUD–2530 is a prerequisite for industry partners to participate in HUD projects. APPS contains data concerning principal participants in multifamily housing projects, including their previous participation with HUD or other housing agencies. APPS also tracks non-compliance of multifamily project participants' by flagging the participants for non-compliance with regulatory and contractual agreements. Flags are used to evaluate the risk of the participants prior to approval for future participation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

General public who participate in HUD multifamily/healthcare programs as owners, general contractors, management agents, consultants, facility operators and master tenants.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) *Contact Information:* Full Name (first/last), Social Security Number (SSN), Address (work/personal), telephone number (work/personal), Email (work/personal) and Tax Identification Number (TIN). (2) *Previous Participation Information:* Social Security number (SSN), tax identification number (TIN), and entity type and their legal structure. (3) *Project Level Information:* Lists of prior HUD projects: Summary of financial, management, or operational difficulties with prior HUD projects (if any); indication of whether principals are or have been the subject of a government investigation; other information relevant to the standards for previous participation approval; minutes of deliberative meetings; flags and the reason for the flag on an external individual or company participant.

RECORD SOURCE CATEGORIES:

Industry partners who are participating in the HUD project and their associates. The following internal application systems access APPS data from a shared repository/server:

- Integrated Real Estate Management System (iREMS).
- Web Access Security System (WASS).
- HUD–2530 eForms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) *Congressional Inquiries Disclosure Routine Use:* To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(2) *Data Breach Remediation Purposes Routine Use:* To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records; (b) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(3) *Data Breach Assistance Routine Use:* To another Federal agency or Federal entity, when HUD determines that information from this systems of record 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) *Disclosures for Law Enforcement Investigations Routine Uses:* To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(5) *Court or Law Enforcement Proceedings Disclosure Routine Uses:* To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order and when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in

such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(6) *Office of Government Information Services Disclosure Routine Use:* To the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies.

(7) *Information Sharing Environment Disclosure Routine Uses:* To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those records data elements considered relevant to accomplishing an agency function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic Records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, SSN, and TIN.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Maintain active office files for 2 years and then retire to the Federal Records Center. Destroy when 4 years old. HUD Records Disposition Schedule, Section 18, item 4(a). NARA Job No. NC1–207–79–3–4(a).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the system, storage, backup, and infrastructure equipment is monitored and by password and code identification card access and limited to authorized users.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR part 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No: 81 FR 50000, Agency/Doc No: FR–5921–N–10, July 29, 2016.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024–05100 Filed 3–8–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7087–N–04]

60-Day Notice of Proposed Information Collection: Lead Hazard Control and Healthy Homes Grant Programs Data Collection—Progress Reporting; OMB Control No.: 2539–0008

AGENCY: Office of Lead Hazard Control and Healthy Homes, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, PRA Compliance Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Anna.P.Guido@hud.gov,* telephone 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

Copies of available documents submitted to OMB may be obtained from Ms. Anna P. Guido].

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Lead Hazard Control and Healthy Homes Grant Programs Data Collection—Progress Reporting.

OMB Approval Number: 2539–0008.

Type of Request: New Collection.

Description of the need for the information and proposed use: Collect data on the progress of grantees' programs.

TABLE 2—ESTIMATED TIME AND COSTS TO RESPONDENTS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Electronic Version of HUD 96006	700	4	2,800	3	8,400	$67	$562,800

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Matthew Ammon,

Director, Office of Healthy, Homes and Lead Hazard Control.

[FR Doc. 2024–05040 Filed 3–8–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7087–N–03]

60-Day Notice of Proposed Information Collection: Survey of Lead Hazard Reduction Program Grantees, OMB Control No.: 2539–New

AGENCY: Office of Lead Hazard Control and Healthy Homes, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, PRA Compliance Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Anna.P.Guido@hud.gov,* telephone 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Anna P. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Survey of Lead Hazard Reduction Program Grantees.

OMB Approval Number: 2539–New.

Type of Request: New Collection.

Description of the need for the information and proposed use: New evaluation of the effectiveness of OLHCHH grantees in producing lead-safe housing, repairing or eliminating lead-based paint hazards.

TABLE 2—ESTIMATED TIME AND COSTS TO RESPONDENTS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Questionnaire	215	1	215	2.33	501	$0	$0

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Matthew Ammon,

Director, Office of Healthy Homes and Lead Hazard.

[FR Doc. 2024–05037 Filed 3–8–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO#4500178000]

Notice of Intent To Amend Resource Management Plans for the Greenlink North Transmission Project, Nevada and Prepare an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Nevada State Office intends to prepare a Resource Management Plan amendment (RMPA) with an associated Environmental Impact Statement (EIS) for the Greenlink North Transmission Project and by this notice is announcing the beginning of the scoping period to solicit public comments and identify issues, and is providing the planning criteria for public review.

DATES: The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by April 10, 2024. To afford the BLM the opportunity to consider issues raised by commenters in the Draft RMPA/EIS, please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments on issues related to the Greenlink North Transmission Project by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2017033/510.*
- *Email: blm_nv_greenlinknorth@blm.gov.*
- *Mail:* BLM, Nevada State Office, Attn: Greenlink North Transmission Project, 1340 Financial Boulevard, Reno, NV 89502.
- Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2017033/510* and at the Nevada State Office in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Brian Buttazoni, Project Manager, telephone (775) 861–6491; address 1340 Financial Boulevard, Reno, NV 89502; email *blm_nv_greenlinknorth@blm.gov.* Contact us at this email address to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Nevada State Director intends to prepare an RMPA/EIS for the Greenlink North Transmission Project, announces the beginning of the scoping process, seeks public input on issues and planning criteria. The plan amendments are being considered to allow the BLM to evaluate modifying restrictions on major rights-of-way (ROWs) within greater sage-grouse habitat management areas and in proximity to leks and to establish a new 235-mile utility corridor between Ely, Nevada and Yerington, Nevada, which would require amending the existing 2001 Consolidated Resource Management Plan in Carson City District, 1986 Shoshone-Eureka Resource Management Plan/Record of Decision in Battle Mountain District, and 2008 Record of Decision/Resource Management Plan in Ely District.

The planning area is located in White Pine, Eureka, Lander, Churchill, and Lyon counties and encompasses approximately 451,706 acres of BLM, U.S. Forest Service, and private lands.

The scope of this land use planning process does not include addressing the evaluation or designation of areas of critical environmental concern (ACEC), and the BLM is not considering ACEC nominations as part of this process.

Purpose and Need

The BLM's preliminary purpose and need for this Federal action is to respond to the ROW application submitted by NV Energy under Title V of FLPMA (43 U.S.C. 1761) on July 20, 2020, to construct, operate, and decommission a proposed system of new 525-kV, 345-kV, 230-kV, and 120-kV electric transmission facilities on BLM-administered lands in White Pine, Eureka, Lander, Churchill, and Lyon counties, in compliance with FLPMA, BLM ROW regulations, the BLM NEPA Handbook (BLM 2008), U.S. Department of the Interior NEPA regulations, and other applicable Federal and State laws and policies. In accordance with FLPMA, public lands are to be managed for multiple uses considering the long-term needs of future generations for renewable and non-renewable resources. The BLM is authorized to grant ROWs on public lands for systems of generation, transmission, and distribution of electrical energy (FLPMA section 501(a)(4)). The U.S. Forest Service, Humboldt-Toiyabe National Forest also received an application from NV Energy for an approximately 10-mile segment of the project. The Forest Service's purpose and need is to respond to NV Energy's application for a Special Use Permit to construct, operate, maintain, and decommission the proposed 500-kV transmission line on National Forest System land in Lander County in compliance with FLPMA, the National Forest Management Act (16 U.S.C. 1601–1614), and the *Toiyabe National Forest Land and Resource Management Plan* (Forest Service 1986 as amended), which provides standards and guidelines for managing the National Forest.

The BLM has also determined that it will evaluate the need for RMPAs for this Project, and as a result the document will be a combined RMPA/EIS following the requirements of the BLM's land use planning regulations. Accordingly, the BLM will consider whether to amend the 2001 Consolidated Resource Management Plan in Carson City District, 1986 Shoshone-Eureka Resource Management Plan/Record of Decision in Battle Mountain District, and 2008 Record of Decision/Resource Management Plan in Ely District within the proposed Project area to establish a new 235-mile long utility corridor between Ely and Yerington, Nevada, and modify restrictions on major ROWs for transmission lines greater than 100 kV currently in place under the 2015 Greater Sage Grouse RMPA, including its designation of habitat management

areas as avoidance areas for major ROWs and restrictions on proximity to greater sage-grouse leks.

Preliminary Proposed Action and Alternatives

The Proposed Action is to construct, operate, maintain, and decommission a proposed system of new 525-kV, 345-kV, 230-kV, and 120-kV electric transmission facilities on approximately 1,394 acres of BLM administered lands. During the original scoping period completed in 2023 several alternatives were presented to the BLM to consider to avoid placement of this project along U.S. Highway 50 and to avoid greater sage-grouse habitat management areas.

Under the No Action Alternative, the BLM and U.S. Forest Service would not issue a ROW grant or special use permit for the construction, operation, maintenance, and decommissioning of a proposed system of new 525-kV, 345-kV, 230-kV, and 120-kV electric transmission facilities. The proposed Project would not be constructed, and existing land uses in the project area would continue.

The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guides the planning effort and lays the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from engagement with Federal, State, and local agencies; Tribes; and stakeholders. The BLM has identified 14 preliminary issues for this planning effort's analysis. The planning criteria are available for public review and comment at the project website: *https://eplanning.blm.gov/eplanning-ui/project/2017033/510*.

Summary of Expected Impacts

The BLM will evaluate the beneficial or adverse short- and long-term impacts from the alternatives utilizing issue-based NEPA analysis for air resources; soil resources; wildlife and special status species; vegetation, including noxious and invasive species; cultural resources; Native American religious concerns; socioeconomics; environmental justice; recreation and access; visual resources; lands and realty; livestock grazing authorizations; and wild horses.

Anticipated Permits and Authorizations

Along with a BLM ROW grant as required under 43 CFR 2801.9, NV Energy anticipates needing additional permits for the proposed project: a Nevada Public Utilities Commission Permit to Construct; Nevada Division of Water Resources water rights modification permits; and other permits, as necessary. A portion of the Project would occur on National Forest System land, which would require a special use permit for the Project. The U.S. Forest Service would rely on the analysis contained in the EIS to make a decision whether or not to issue a special use permit and under what conditions. Further details on these permitting requirements may be found in the Preliminary Plan of Development, which is available on the project website at: *https://eplanning.blm.gov/eplanning-ui/admin/project/2017033/510*.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 90-day comment period on the Draft RMPA/EIS, and a concurrent 30-day public protest period and 60-day Governor's consistency review on the Proposed RMPA. The Draft RMPA/EIS is anticipated to be available for public review in the summer of 2024 and the Final RMPA/EIS is anticipated to be available for public protest of the Proposed RMPAs in the winter 2025, with Approved RMPAs and a Record of Decision in late spring or early summer of 2025.

Public Scoping Process

This notice of intent initiates a new scoping period and public review of the planning criteria, which guide the development and analysis of the Draft RMPA/EIS. Between May 26, 2023 and July 19, 2023 the BLM completed a 45-day scoping period that included a combination of virtual and in-person meetings. While the Project has not changed, the BLM has determined that several plan amendments will need to be evaluated, and therefore the BLM is initiating a second scoping period disclosing the nature of the plan amendments that would be evaluated in the upcoming EIS/RMPA.

The BLM will be holding at least one virtual meeting. The date and Zoom link for the virtual meeting will be announced at least 15 days in advance through the project website at: *https://eplanning.blm.gov/eplanning-ui/project/2017033/510*.

Lead and Cooperating Agencies

The BLM Nevada State Office is the lead Federal agency for this EIS. In January 2022 the BLM invited approximately 35 Federal, State and county agencies, and Tribes to become Cooperating Agencies for the Project. Cooperating Agencies participating in meetings and the environmental analysis of the Project include: Department of the Air Force, U.S. Forest Service, U.S. Environmental Protection Agency Region 9, U.S. Fish and Wildlife Service, Nevada Department of Transportation, Duckwater Shoshone Tribe, Fallon Paiute-Shoshone Tribe, Pyramid Lake Paiute Tribe, Walker River Paiute Tribe, Yomba Shoshone Tribe, Nevada Department of Agriculture, Nevada Department of Wildlife, Nevada Department of Conservation & Natural Resources, Nevada Division of Minerals, Churchill County, White Pine County, Lyon County, Eureka County, and Lander County.

Responsible Official

The Nevada State Director is the deciding official for the proposed Greenlink North Transmission Project on BLM administered land and the Forest Supervisor of the Humboldt-Toiyabe National Forest is the deciding official on National Forest System land.

Nature of Decision To Be Made

The nature of the decision to be made is the State Director's selection of land use planning decisions pursuant to this RMPA for managing BLM-administered lands under the principles of multiple use and sustained yield in a manner that best addresses the purpose and need.

The BLM will decide whether to grant, grant with conditions, or deny the ROW application. Pursuant to 43 CFR 2805.10, if the BLM issues a ROW, the BLM decision may include terms, conditions, and stipulations determined to be in the public interest. The BLM will make the decision as to whether or not to approve any plan amendments in accordance with BLM policy about delegation of authorities. In the ROD, the BLM will clearly distinguish the RMPA decisions from the selected alternative for the Project.

The Forest Service will decide whether to issue a special use permit to construct, operate, maintain, and decommission the proposed facilities on National Forest System land and, if so, under what terms and conditions.

Forest Service Administrative Review Process

The decision that the USDA Forest Service will make is subject to a pre-decisional administrative review process, also known as an objection process (36 CFR 218, subparts A and B).

The objection process provides an opportunity for members of the public who have participated in the planning process for the action to have any unresolved concerns reviewed by the USDA Forest Service prior to a final decision by the Responsible Official.

Comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Commenting during scoping and any other designated opportunity to comment provided by the Responsible Official as prescribed by the applicable regulations will also govern eligibility to object once the final EIS and draft Record of Decision has been published. Comments submitted anonymously will be accepted and considered; however, they will not be used to establish eligibility for the objection process.

Objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with 36 CFR 218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated opportunities.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the RMPA/EIS in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in this process: air resources, archaeology, vegetation, environmental justice, mineral resources and soils, hydrology, groundwater, invasive/non-native species, lands and realty, paleontology, rangelands, wild horses, recreation and access, socioeconomics, soils, visual resources, and wildlife.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the Proposed Action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendment or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this Project to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. Information about historic and cultural resources and threatened and endangered species within the area potentially affected by the RMPAs will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with The Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Fallon Paiute-Shoshone Tribe, Fort McDermitt Paiute and Shoshone Tribe, Lovelock Paiute Tribe, Moapa Band of Paiutes, Pahrump Paiute Tribe, Pyramid Lake Paiute Tribe, Reno-Sparks Indian Colony, Shoshone-Bannock Tribes, Shoshone-Paiute Tribes of Duck Valley, Summit Lake Paiute Tribe, Susanville Indian Rancheria, Te-Moak Tribe of Western Shoshone, Te-Moak Tribe-Battle Mountain Band, Te-Moak Tribe-Elko Band, Te-Moak Tribe-South Fork Band, Te-Moak Tribe-Wells Band, Timbisha Shoshone Tribe, Walker River Paiute Tribe, Washoe Tribe of Nevada and California, Winnemucca Indian Colony, Winnemucca Indian Colony, Yerington Paiute Tribe, and Yomba Shoshone Tribe on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

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: 40 CFR 1501.7, 43 CFR 1610.2, and 43 CFR part 2800)

Jon K. Raby,

State Director.

[FR Doc. 2024–05071 Filed 3–8–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO4500177704]

Western Montana Resource Advisory Council's Madison River Corridor Fee Proposals Subcommittee Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council's (Council) Madison River Corridor Fee Proposals Subcommittee will meet as follows to study the BLM Dillon Field Office's recreation fee proposals for the Madison River Corridor.

DATES: The Subcommittee will meet virtually on April 11, April 23, May 7, and May 23, 2024, from 9 a.m. to noon mountain time.

ADDRESSES: Final agendas will be available and on the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/western-montana-rac* or by request to the contact listed below at least 2 weeks prior to the first meeting. All meetings are open to the public.

Written comments for the Subcommittee may be sent electronically in advance of the scheduled meetings to Public Affairs Specialist David Abrams at *dabrams@blm.gov,* or in writing to BLM, Western Montana District/Public Affairs, 101 N Parkmont, Butte, MT 59701.

FOR FURTHER INFORMATION CONTACT: David Abrams, BLM Western Montana District Office, telephone: (406) 437–2562, email: *dabrams@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 Mr. Abrams. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Please 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 **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.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM's Western Montana District and offers advice on the implementation of the comprehensive, long-range plan for management, use, development, and protection of the public lands within the district. The Madison River Corridor Fee Proposals Subcommittee was formed at the Council's Jan. 11, 2024, meeting with the purpose of compiling information, conducting research, and reporting findings to the full Council for their consideration and formation of recommendations on the Dillon Field Office's recreation fee proposals on the Madison River Corridor. Meetings are open to the public in their entirety and a public comment period will be held near the end of the meeting.

Interested persons may make verbal presentations to the Subcommittee during the meeting or file written statements. Such requests should be made to David Abrams prior to the public comment period. Depending on the number of people who wish to speak, the time for individual comments may be limited.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Kathryn A. Stevens,

BLM Western Montana BLM District Manager.

[FR Doc. 2024–05135 Filed 3–8–24; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 245R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Morgan Raymond, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mraymond@usbr.gov;* telephone 303–445–3382.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary Maintenance
EXM Emergency Extraordinary Maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District
WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and non-project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for XM funded pursuant to title IX, subtitle G of Public Law 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting.

5. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting.

6. Milk River Project, Montana: Proposed amendments to contracts to reflect current landownership.

7. Title transfer agreements; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

8. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58) and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

9. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Intent to modify long-term water service contract to add irrigated acres.

10. Pitkin County and City of Aurora, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contract at Ruedi Reservoir.

11. Fresno Dam, Milk River Project, Montana: Consideration of contract(s) for repayment of SOD costs.

12. Lugert-Altus ID, W.C. Austin Project, Oklahoma: Consideration for amendment to contract No. Ilr-1375.

13. City of Casper; Kendrick Project, Wyoming: Consideration for renewal of long-term water service contract No. 2–07–70–W0534.

14. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract.

15. 71 Ranch, L.P.; Canyon Ferry Unit, P–SMBP; Montana: Consideration for a new long-term contract for an irrigation water supply.

16. Board of Water Works of Pueblo; Fryingpan-Arkansas Project, Colorado: Consideration for amendment to assign Contract No. 039E6C0117 for transportation of water.

17. Tintina Montana, Inc., Canyon Ferry Unit, P–SMBP, Montana: Consideration for a long-term contract for an M&I mitigation water supply.

18. Frenchman-Cambridge ID, Frenchman-Cambridge Division, P–SMBP, Nebraska: Consideration to amend contract for change to place of use and point of diversion.

19. Greenfields ID, Sun River Project, Montana: Consideration for Lease of Power Privilege for Pishkun Inlet. Consideration for additional sites is ongoing.

20. White Rock Oil & Gas, Lower Yellowstone Project, Montana: Consideration of an excess capacity contract for conveyance of private M&I water supply.

21. Gray Goose ID, Gray Goose Project, P–SMBP, South Dakota: Consideration for amendment for land inclusion to contract No. 0–07–60–W0563.

22. Hillcrest Colony, Inc., Canyon Ferry Unit, P–SMBP, Montana: Consideration for renewal of long-term water service contract No. 149E670110.

23. Pueblo West Metro District, Fryingpan-Arkansas Project, Colorado: Consideration for renewal of long-term water service contract No. 4–07–70–W0692.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to title IX, subtitle G of Public Law 111–11 to be executed as project progresses.

3. Middle Rio Grande Project, New Mexico: Reclamation will continue annual leasing of water from various San Juan-Chama Project contractors in 2024 to stabilize flows in a critical reach of the Rio Grande to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 7,308 acre-feet of water from San Juan-Chama Project contractors in 2022.

4. South Cache Water Users Association, Hyrum Project, Utah: Pursuing repayment contract for SOD costs pursuant to the Reclamation Safety of Dams Act of 1978 (Pub. L. 97–293).

5. Pojoaque Valley ID, San Juan-Chama Project, New Mexico: An amendment to the repayment contract to reflect the changed allocations of the Aamodt Litigation Settlement Act (title VI of the Claims Resolution Act of 2010, Pub. L. 111–291, December 8, 2010, and article 7 of the Settlement Agreement

dated April 19, 2012) is currently under review by the Pojoaque Valley ID board. The draft contract is currently under review with the Pojoaque Valley ID board.

6. State of Wyoming, Seedskadee Project; Wyoming: The Wyoming Water Development Commission is interested in purchasing an additional 219,000 acre-feet of M&I water from Fontenelle Reservoir. Reclamation and the State of Wyoming are pursuing entering into a Contributed Funds Act agreement which allows the State to advance funds to Reclamation associated with activities involved in contracting for remaining available M&I water as specified in section 4310 of Public Law 115–270.

7. Ute Indian Tribe of the Uinta and Ouray Reservation, CUP, Utah: The Ute Indian Tribe of the Uinta and Ouray Reservation has requested the use of excess capacity in the Strawberry Aqueduct and Collection System, as authorized in the CUP Completion Act legislation.

8. Ute Indian Tribe of the Uinta and Ouray Reservation; Flaming Gorge Unit, CRSP; Utah: As part of discussions on settlement of a potential compact, the Ute Indian Tribe of the Uinta and Ouray Reservation has indicated interest in storage of its potential water right in Flaming Gorge Reservoir.

9. State of Utah; Flaming Gorge Unit, CRSP; Utah: The State of Utah has requested contracts that will allow the full development and use of the CUP Ultimate Phase water right of 158,000 acre-feet of depletion, which was previously assigned to the State of Utah. A contract for 72,641 acre-feet was executed March 20, 2019. A contract for the remaining 86,249 acre-feet has been negotiated and is awaiting completion of NEPA activities.

10. Weber Basin Water Conservancy District, Weber Basin Project, Utah: The District has requested permission to install a low-flow hydro-electric generation plant at Causey Reservoir to take advantage of winter releases. This will likely be accomplished through a supplemental O&M contract.

11. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Ute Mountain Ute Tribe has requested a water delivery contract for 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554).

12. Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations on an OM&R transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project; distribution of water; and sets forth the allocation and payment of annual OM&R costs of the Project.

13. Animas-La Plata Project, Colorado-New Mexico: (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (title X of Pub. L. 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington, New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (title X of Pub. L. 111–11); and (c) Operations agreement among the United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Public Law 111–11, section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

14. City of Page, Arizona; Glen Canyon Unit, CRSP; Arizona: Request for a long-term contract for 975 acre-feet of water for municipal purposes.

15. Title transfer agreements; Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Potential title transfer agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

16. Mancos Water Conservancy District, Mancos Project, Colorado: Amendment (No. 2) to repayment contract No. 10–WC–40–394 to incorporate the provisions provided in Public Law 116–260, to review and approve costs associated with the completion of the rehabilitation project and credit the District for all amounts paid by the District for engineering work and improvements directly associated with the rehabilitation project, whether before, on, or after the date of enactment of Public Law 116–260.

17. Uncompahgre Water Users Association and Gunnison County Electric Association (together, Taylor River Hydro, LLC), Uncompahgre Project, Colorado: Lease of power privilege contract for development of hydropower at Taylor Park Dam. This contract will provide the terms and conditions for leasing the Federal premises for leasing the Federal premises for third-party hydropower development.

18. Weber River Water Users Association, Weber Basin Project, Utah: The Association is pursuing a contract to convert all or part of its water from irrigation to miscellaneous purposes pursuant to the Sale of Water for Miscellaneous Purposes Act (Pub. L. 66–147).

19. Uintah Water Conservancy District; Jensen Unit, CUP; Utah: The District has requested to initiate the process to construct the Burns Bench Pumping Plant, as part of the CUP—Jensen Unit. This action will require various contracts and agreements which include a Contributed Funds Act agreement for the District to provide funding to Reclamation and an implementation agreement for construction and O&M of the Burns Bench Pumping Plant.

20. Moon Lake Water Users Association, Moon Lake Project, Utah: The Association is interested in installing a small hydro-electric generation plant on the outlet works Moon Lake Dam. This will likely be accomplished through a supplemental O&M agreement.

21. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: The Albuquerque Bernalillo County Water Utility Authority and Reclamation have entered negotiations for a contract to lease 10,000 acre-feet of storage space in Abiquiu Reservoir to store San Juan-Chama Project water. This will be a 15-year contract.

22. Eden Valley IDD, Eden Project, Wyoming: The Eden Valley IDD proposes to raise the level of Big Sandy Dam to fully perfect its water rights. An agreement will be necessary to obtain the authorization to modify federal facilities.

23. Grand Valley Water Users Association and Orchard Mesa ID, Grand Valley Project, Colorado: Lease of Power Privilege contract for development of hydropower on the Power Canal (Vinelands Power Plant) near the existing Grand Valley Power Plant which has been decommissioned. This contract provides the terms and conditions for leasing the Federal premises for 3rd party hydropower development.

24. Public Service Company of New Mexico, Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations for a carriage contract with Public Service Company

of New Mexico pursuant to Public Law 111–11, section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to the Company for the use of Project facilities.

25. Enchant Energy Corporation, Navajo-Gallup Water Supply Project, New Mexico (Project): Reclamation continues negotiations for a carriage contract with Enchant Energy Corporation pursuant to Public Law 111–11, section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to Enchant Energy for the use of Project facilities.

26. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Reclamation has held technical meetings with the Water Authority regarding retention of prior and paramount water in Abiquiu Reservoir on behalf of the six Middle Rio Grande Pueblos. El Vado Reservoir, which normally retains the Pueblo's prior and paramount water, is under construction pursuant to SOD work and will likely not be ready to store water again until 2025.

27. Jicarilla Apache Nation, Navajo Project, New Mexico: Water service agreement between the Jicarilla Apache Nation and SIMCOE for delivery of 1,500 acre-feet of M&I water from the Jicarilla's Settlement Water from the Navajo Reservoir Supply. This agreement will have a term through December 31, 2026.

28. San Juan Water Commission, Public Service Company of New Mexico, and the La Plata Conservancy District; Animas-La Plata Project; New Mexico: Contract for the delivery of 500 acre-feet of M&I water from the Navajo Reservoir supply as supplemented via exchange of Animas-La Plata Project water at the confluence of the San Juan and Animas Rivers. This agreement will have a term through December 31, 2032.

29. Grand Valley Water Users Association, Grand Valley Project, Colorado: Development of an XM contract pursuant to title IX, subtitle G of Public Law 111–11, to provide funds to the Association for the XM required for the Project.

30. Orchard City ID, Fruitgrowers Project, Colorado: Development of a Contributed Funds Agreement for work at Fruitgrowers Reservoir.

31. The Wyoming Water Development Commission; Seedskadee Project, Wyoming: The Commission has requested to acquire additional water in Fontenelle Reservoir. Reclamation is engaging in technical meetings with the Commission to explore the potential terms of a repayment contract, including the quantity of water available.

32. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Colorado and Utah: Contracts to be executed pursuant to Title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see *https://www.usbr.gov/bil/.*

33. Strawberry Valley Water Users Association, Strawberry Valley Project, Utah: The Association is pursuing a conversion contract to convert all or part of its water irrigation to miscellaneous purposes pursuant to the Sale of Water for Miscellaneous Purposes Act (Pub. L. 66–147).

34. D. E. Shaw Renewable Investments, Navajo-Gallup Water Supply Project, New Mexico: Reclamation received a request for negotiations for a carriage contract with Shaw pursuant to Public Law 111–11, section 10602(h) which provides conveyance and storage of non-project water through project facilities and sets forth payment of OM&R costs assignable to the Shaw for the use of project facilities.

35. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Amendment to contract No. 22–WC–40–940 to increase repayment from approximately $8M to $23M.

36. The Jordanelle Special Service District; Bonneville Unit, CUP; Utah: The District desires to enter into a Section 14 of the Reclamation Projects Act of 1939 contract for Reclamation to dedicate a water right in order for the Utah State Parks to receive water at the Rock Cliff Recreation Area for recreational purposes.

37. Los Ranchitos Estates, Florida Project, Colorado: Reclamation received a request for a long-term water service contract (25 years) to augment depletions from residential water uses within the subdivision. The proposed contract will be for 36 acre-feet of water annually.

38. Forrest Groves Estates, Florida Project, Colorado: Reclamation received a request for a long-term water service contract (25 years) to augment depletions from residential water uses within the subdivision. The proposed contract will be for 43 acre-feet of water annually.

39. Country Aire Estates, Florida Project, Colorado: Reclamation received a request for a long-term water service contract (25 years) to augment depletions from residential water uses within the subdivision. The proposed contract will be for 7 acre-feet of water annually.

40. Provo River Water Users Association, Provo River Project, Utah: Contract for XM at Deer Creek Dam pursuant to title IX, subtitle G of Public Law 111–11.

41. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Contract for the use of return flows from the Weber Basin Project.

Completed contract action:

1. (15) Middle Rio Grande Water Conservancy District, Middle Rio Grande Project, New Mexico: Repayment contract for SOD work at El Vado Dam. SOD work to repair steel faceplate and spillways began in 2023. Contract executed on April 27, 2021.

2. (17) Taos Pueblo, San Juan-Chama Project, New Mexico: Contract between Reclamation and Taos Pueblo to lease up-to 2,200 acre-feet of the Pueblo's Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract is in accordance with approved basis of negotiation dated April 20, 2021. Contract executed on January 28, 2022.

3. (25) Pueblo of Ohkay Owingeh, San Juan-Chama Project, New Mexico: Lease for 2,000 acre-feet of the Pueblo's San Juan-Chama Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 15 years. Contract executed on October 23, 2021.

4. (26) Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Contract for Reclamation to lease 5,000 acre-feet of the Authority's San Juan-Chama Project water to stabilize flows in the critical reaches of the Rio Grande to meet the needs of the endangered silvery minnow. Contract executed October 30, 2021.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year, as recommended by the Arizona Department of Water Resources.

2. Ogram Boys Enterprises, Inc., BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion and delivery.

3. Gold Dome Mining Corporation and Wellton-Mohawk IDD, Gila Project, Arizona: Terminate Contract No. 0–07–30–W0250 pursuant to Articles 11(d) and 11(e).

4. Estates of Anna R. Roy and Edward P. Roy, Gila Project, Arizona: Terminate Contract No. 6–07–30–W0124 pursuant to article 9(c).

5. ChaCha, LLC, Arizona, BCP: Assignment of the water delivery contract for transfer of ownership of the land within ChaCha LLC's contract service area.

6. Desert Lawn Memorial Park Associates, Inc., and SAIA Family LP, BCP, Arizona: Review and approve a proposed partial assignment of contract No. 14–06–300–2587 as recommended by the Arizona Department of Water Resources and transfer of Arizona fourth priority Colorado River water in the amount of 315 acre-feet per year from 360 acre-feet per year on 70 acres of land acquired from Desert Lawn Memorial Park Associates, Inc.

7. Armon Curtis, BCP, Arizona: Amendment and partial assignment of the water delivery contract for transfer of ownership of the Armon Curtis Deeded land and exclude lands owned by the United States.

8. Gary and Barbara Pasquinelli and Pasquinelli, Gary J Trust/90, BCP, Arizona: Amendment and assignment of the water delivery contract for transfer of ownership to Pasquinelli, Gary J Trust/90.

9. Present Perfected Right 30 (Stephenson), BCP, California: Offer contracts for delivery of Colorado River water to holders of miscellaneous present perfected rights as described in the 2006 Consolidated Decree in Arizona v. California, 547 U.S. 150.

10. Mohave Water Conservation District and the City of Bullhead City (Bullhead City), Arizona; BCP; Arizona: Enter into a proposed contract No. 9–07–30–W0012, assignment of Arizona fourth-priority Colorado River water entitlement in the amount of 1,800 acre-feet per year from the District to Bullhead City and amend Bullhead City's Colorado River water delivery contract No. 2–07–30–W0273 to increase their Colorado River water entitlement from 15,210 to 17,010 acre-feet per year and increase the Bullhead City contract service area to include the District's land that previously received Colorado River water pursuant to contract No. 9–07–30–W0012.

11. Gila Monster Farms Partnership, LLC, BCP, Arizona: Proposed partial assignment of contract No. 6–07–30–W0337 providing for the transfer of ownership of 480 acres within the contract service area to Tama Land Pacific, LLC, and transfer of associated Colorado River water in the appropriate quantity and priority associated with the land purchased. Amend Gila Monster Farms Partnership, LLC Colorado River water delivery contract No. 6–07–30–W0337 to decrease its Colorado River water entitlement commensurate with the partial assignment.

12. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 42 acre-feet of Colorado River water per year, in accordance with Present Perfected Right No. 19 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

13. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Arizona and California: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to Title IX, Subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

14. Yuma ID, Gila Project, Arizona: Potential title transfer of an office building and land to the District pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

Completed contract actions:

1. (20) Gold Standard Mines Corp., BCP, Arizona: Termination of contract No. 3–07–30–W0038 for delivery of Colorado River water for use in Arizona. Contract terminated on September 30, 2023.

Columbia-Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Whitestone Reclamation District, Chief Joseph Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Burley and Minidoka IDs, Minidoka Project, Idaho: Supplemental and amendatory contracts to transfer the O&M of the Main South Side Canal Headworks to the Burley ID and transfer the O&M of the Main North Side Canal Headworks to the Minidoka ID.

6. Clean Water Services and Tualatin Valley ID, Tualatin Project, OR: Long-term water service contract that provides for the District to allow Clean Water Services to beneficially use up to 6,000 acre-feet annually of stored water for water quality improvement.

7. Stanfield ID, Umatilla Basin Project, OR: A short-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation and for such use in October to extend their irrigation season.

8. Falls ID, Michaud Flats Project, Idaho: Amendment to contract No. 14–06–100–851 to authorize the district to participate in state water rental pool.

9. Roza ID, Yakima Project, Washington: Contract for use of water in dead space of Kachess Reservoir and construction of a pumping plant.

10. Windy River LLC, Umatilla Project, Oregon: Contract for use of project facilities pursuant to the Warren Act.

11. Water user entities responsible for repayment of reimbursable project construction costs in Idaho, Washington, Oregon, Montana, and Wyoming: Contracts for conversion or prepayment executed pursuant to the WIIN Act.

12. Title Transfer Agreements; Idaho, Washington, Oregon, Montana, and Wyoming: Potential title transfer agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

13. Irrigation WDs; Idaho, Washington, Oregon, Montana, and Wyoming: Temporary Warren Act contracts for terms of up to 5 years providing for use of excess capacity in Reclamation facilities for annual quantities exceeding 10,000 acre-feet.

14. Idaho, Washington, Oregon, Montana, and Wyoming: Aquifer Recharge Flexibility Act (Pub. L. 116–260) contracts that allow the use of excess capacity in Reclamation facilities for aquifer recharge of non-Reclamation project water.

15. Storage Division, Yakima Project, Washington: Contracts with water user entities for the repayment of reimbursable shares of the costs of the SOD program modification for Kachess Dam.

16. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Idaho, Washington, and parts of Montana, Oregon, and Wyoming: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58) and/or contracts for XM pursuant to title IX, Subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information regarding the Bipartisan Infrastructure Law go to *https://www.usbr.gov/bil/.*

17. J.R. Simplot Company and Micron Technology, Inc., Boise Project, Arrowrock Division, Idaho: Request to renew M&I water service contract pursuant to section 9(c)(2) of the Reclamation Project Act of 1939.

18. Columbia Basin Project Water Users, Columbia Basin Project, Washington: M&I water service contracts, $48 per acre-foot, per annum.

19. North Unit ID, Crooked River Project, Oregon: The Crooked River Collaborative Water Security and Jobs Act of 2014 (Pub. L. 113–244) provides that Reclamation may contract up to 10,000 acre-feet of water annually, on the request of the North Unit ID, from Prineville Reservoir pursuant to temporary water service contracts.

California-Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation WDs, individual irrigators, M&I and miscellaneous water users, California, Nevada, and Oregon: Short-term (up to 5 years) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually; Warren Act contracts for use of excess capacity in project facilities for quantities that could exceed 10,000 acre-feet annually; and contracts for similar services for up to 1,000 acre-feet annually.

2. State of California, Department of Water Resources, CVP, California: Temporary or short-term conveyance agreements for various purposes.

3. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife, CVP, California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for Central Valley Project Improvement Act refuge water conveyance and/or facilities improvement construction to deliver water for certain federal wildlife refuges, state wildlife areas, and private wetlands.

4. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 5 years.

5. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project, Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

6. Irrigation WDs, individual irrigators, M&I and miscellaneous water users, CVP, California: Execution of long-term Warren Act contracts (up to 40 years) with various entities for conveyance of non-project water in the CVP.

7. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 6,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of non-project water in New Melones Reservoir.

8. Pershing County Water Conservation District, Pershing County, State of Nevada, and Lander County; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

9. Irrigation contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

10. City of Santa Barbara, Cachuma Project, California: Execution of a long-term Warren Act contract with the City for conveyance of non-project water in Cachuma Project facilities.

11. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is to satisfy the federal government's obligation to provide drainage service to certain lands located within the San Luis Unit of the CVP.

12. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,525 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

13. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the District.

14. Irrigation WDs, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

15. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

16. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

17. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain No. 1, Lost River Diversion Channel.

18. U.S. Fish and Wildlife Service, Tulelake ID, Klamath Project, Oregon and California: Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

19. Tulelake ID, Klamath Project, Oregon and California: Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

20. Placer County Water Agency and East Bay Municipal Utility District, CVP, California: Long-term Warren Act contracts for up to 47,000 acre-feet annually with the Agency for storage and conveyance in Folsom Reservoir and with the District for conveyance through Folsom South Canal.

21. State of California, Department of Water Resources, CVP, California: Negotiation of a multi-year long-term wheeling agreements with the State of California, Department of Water Resources providing for the conveyance and delivery of CVP water through the State of California's water project facilities to Byron-Bethany ID (Musco Family Olive Company), Del Puerto WD, and the Department of Veteran Affairs, San Joaquin Valley National Veterans Cemetery.

22. Contra Costa WD, CVP, California: Title transfer of lands and features of the Contra Costa Canal System of the CVP.

23. Title transfer agreements; California, Nevada, and Oregon: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

24. CVP, California: Operational agreements, exchange agreements, and contract amendments with non-federal project entities as required for federal participation in non-federal storage projects pursuant to the WIIN Act.

25. Shasta County Water Agency, CVP, California: Proposed partial assignment of 400 acre-feet of the Shasta County Water Agency's CVP water supply to the Shasta Community Services District for M&I use.

26. Solano County Water Agency, Solano Project, California: Renewal of water service and OM&R contracts.

27. San Luis Canal Company, Central California ID, Firebaugh Canal WD, Columbia Canal Company (collectively San Joaquin River Exchange Contractors), CVP, California: Amend 1968 Second Amended Contract for Exchange of Waters.

28. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of long-term water service contract for up to 1,500 acre-feet from Lake Berryessa.

29. San Juan WD, CVP, California: Long-term Warren Act contract for up to 25,000 acre-feet annually for conveyance through Folsom Reservoir and associated facilities.

30. Klamath County Drainage Services District, Klamath Project, Oregon: Agreement for interim O&M of the 1–C Canal.

31. Fresno Slough WD, CVP, California: Proposed full assignment of up to 4,000 acre-feet of Fresno Slough WD's CVP supply to Angiola WD.

32. Mercy Springs WD, CVP, California: Proposed partial assignment of up to 1,300 acre-feet of Mercy Springs WD's CVP water supply to Angiola WD.

33. Water user entities responsible for payment of reimbursable costs for Reclamation projects in California, Nevada, and Oregon: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to Title IX, Subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information regarding the Bipartisan Infrastructure Law go to *https://www.usbr.gov/bil/.*

34. Cachuma Project, California: Negotiation and execution of a repayment contract with the Cachuma Operation and Maintenance Board for SOD projects.

35. Klamath Project, Oregon: Negotiation and execution of repayment contract for Lost River Improvement Channel Pipe Replacement Project.

36. CVP, California: Negotiation and execution of repayment contract with San Luis and Delta-Mendota Water Authority for procurement and installation of two additional pumps at the Delta-Mendota Canal Intertie.

Christopher Beardsley,

Director, Mission Assurance and Protection Organization.

[FR Doc. 2024–05123 Filed 3–8–24; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint regarding *Certain Dynamic Random Access Memory Device and Product Containing Same,* DN 3729; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Complainant Wen T. Lin on March 4, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory device and product containing same. The complaint names as a respondent: Etron Technology, Inc. of Taiwan. The complainant requests that the Commission issue an exclusion order and a cease and desist order.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any

written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3729'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 5, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–05041 Filed 3–8–24; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–51]

Mark Fenzl, D.O.; Decision and Order

On August 11, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) and Immediate Suspension Order (ISO) to Mark Fenzl, M.D. (Respondent), of Florida immediately suspending and seeking to revoke his DEA Certificate of Registration, Control No. FF7471840, and alleging that his ''continued registration is inconsistent with the public interest.'' OSC, at 1 (citing 21 U.S.C. 823(g)(1) [1]).

A hearing was held before DEA Administrative Law Judge Teresa A. Wallbaum (the ALJ). On April 10, 2023, the ALJ issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (RD), which recommended that the Agency revoke Respondent's registration. RD, at 40. Respondent did not timely file exceptions to the RD.[2] Having reviewed the entire record, the Agency, except as noted below,[3] adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,[4] findings of fact, conclusions of law, and recommended sanction in the RD and summarizes, expands upon, and clarifies portions thereof herein.

I. Findings of Fact

The Agency finds from clear, unequivocal, and convincing evidence that Respondent committed numerous failures in his prescribing conduct that fell below the standard of care in Florida. Specifically, the Agency finds that from June 2020 through April 2022, Respondent issued controlled substances to Patients J.H., C.K., G.K., and J.K. without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 17–30.

Florida Standard of Care

Dr. Lynch provided expert testimony on the applicable standard of care for prescribing controlled substances in Florida.[5] RD, at 6–7, 11–17; Tr. 141–

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] On May 8, 2023, after the deadline to file exceptions passed and the ALJ certified the record to the Administrator, Respondent submitted a document entitled ''Appeal to the Drug Enforcement Agency Administrator.'' Respondent's document appears to be an untimely attempt to file exceptions to the RD. *See* 21 CFR 1316.66(a), 1316.67. On that basis, they were not considered in this Decision. Further, even if these exceptions had been timely submitted, they contain arguments raised by Respondent in earlier filings that were addressed by the ALJ, lack the required specific and complete citations to the record, are contradicted or unsupported by the record, and/or otherwise lack merit. Accordingly, the Agency finds these untimely exceptions to be unpersuasive. *See Yogeshwar Gill, M.D.,* 88 FR 55,076, 55,076 n.3 (2023).

[3] See footnote 14, *infra.*

[4] The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–11. The Agency agrees with the ALJ that the testimony by the Diversion Investigator (DI), which focused on the investigative steps completed in the case and establishing the foundations for many of the exhibits received into the record, was sufficiently detailed, plausible, and internally consistent to be afforded full credibility. *See id.* at 5–6. The Agency also agrees with the ALJ's assessment that Dr. Paul Lynch, M.D., the Government's expert witness, was reliable and persuasive. *See id.* at 6. His testimony was based on extensive relevant experience and consistent with applicable Florida law, and Respondent was unpersuasive in his efforts to challenge Dr. Lynch's objectivity and reliability. *See id.* at 7. Regarding Respondent's testimony, the Agency adopts the ALJ's assessment that although Respondent testified candidly, his recollection was unreliable and at times contradicted by documentary evidence. *See id.* at 11. Therefore, the ALJ appropriately gave his testimony limited weight. *See id.* at 11. As the ALJ noted, Respondent's testimony on Florida's standard of care was vague, and he characterized pain management as an ''area of weakness'' for him. *See id.* at 11 (quoting Tr. 516–17). Accordingly, consistent with the ALJ's findings, to the extent that Respondent disagreed with Dr. Lynch's testimony regarding the Florida standard of care governing pain management, the Agency gives controlling weight to Dr. Lynch's testimony. *See id.* at 11.

[5] The Agency adopts and incorporates by reference the entirety of the ALJ's findings regarding the standard of care in Florida and the related summary of Dr. Lynch's expert testimony.

473. According to Dr. Lynch, the standard of care stems from state statutes and additional, established practices that supplement, or expand upon, those statutes. RD, at 11; Tr. 149, 263–64. The standard of care requires the pain management practitioner to take a ''complete medical history.'' RD, at 13; Fla. Stat. § 456.44(3)(a). A thorough medical history should include a review of prior treatments and tests and a social history regarding possible substance abuse or mental health issues. RD, at 13; Tr. 157–59. The Florida standard of care also requires a physical examination before prescribing controlled substances and at each subsequent visit where controlled substances are prescribed. RD, at 13; Tr. 165–66, 349; *see also* Fla. Stat. § 456.44(3)(a). For any visit, the standard of care requires taking and recording vital signs. RD, at 13; Tr. 308. The physician must document and discuss abnormal vital signs, and failing to follow up on a patient with higher-than-normal vital signs is ''significantly outside the standard of care.'' RD, at 13–14; Tr. 310, 345–48, 394–95.

For pain management, the physical examination must involve a targeted examination of the area of pain and a ''neurologic or behavioral interaction with the patient'' to look for signs of intoxication. RD, at 13; Tr. 166, 437–38. When patients have a spinal issue, the standard of care includes an examination of all four extremities for strength, sensation, reflexes, and range of motion. RD, at 13; Tr. 166. The failure to even touch a patient in a physical exam for more than two years ''is considerably outside the standard of care.'' RD, at 13; Tr. 312. While the standard of care ''is pretty broad on how frequent imaging should be,'' it typically requires new images every two to three years. RD, at 13; Tr. 321. It is not, however, sufficient to simply order imaging; the patient must obtain the image. RD, at 13; Tr. 339–40. In this case, the physical examinations often stated simply that a patient was ''Alert, Responsive, Interactive, which means they're just there, that they showed up, that they're alive.'' RD, at 13; Tr. 261–62. Such a physical examination is ''not an appropriate exam,'' and does not satisfy the requirement in Florida Statutes Section 456.44 that a physician must conduct a physical examination sufficient to establish an appropriate diagnosis that justifies prescribing controlled substances. RD, at 14; Tr. 262.

The Florida standard of care requires a pain management physician to engage in regular patient visits and ongoing monitoring ''to look for risk factors of abuse or misuse or diversion of the medications.'' RD, at 14; Tr. 164–65; *see also* Fla. Stat. § 456.44(3)(d). One method of monitoring is the legal requirement to check the Prescription Drug Monitoring Program (PDMP) each time a practitioner writes a controlled substance prescription, which allows a practitioner to determine if the patient is obtaining the same drugs from another doctor or frequenting different pharmacies. RD, at 14; Tr. 169–70. Another method of monitoring is urine drug screening and testing with documentation of the results in the patient's record. RD, at 14; Tr. 216–18, 223–24. If there are signs of an abnormal or aberrant drug test result, Florida law establishes the steps a practitioner must take to address that aberrant result. RD, at 15; Tr. 169, 224, 247–48; *see also* Fla. Stat. § 456.44(3)(g). Evidence of diversion exists if a patient fails to test positive for a controlled substance that is currently being prescribed. RD, at 15; Tr. 224. If there are signs of diversion, Florida Statutes Section 456.44 requires that the practitioner stop prescribing the controlled substance and discharge the patient. RD, at 15; Tr. 169, 247–48; *see also* Fla. Stat. § 456.44(3)(g). Evidence of abuse exists if a patient tests positive for a substance that is not prescribed or for an illicit substance. RD, at 15; Tr. 224–25, 370–71. If there is evidence of abuse, Section 456.44 requires the practitioner to refer the patient to an addiction medicine specialist.[6] RD, at 15; Tr. 169, 224–25; *see also* Fla. Stat. § 456.44(3)(g). While there is a gray area on whether it could be acceptable to continue to prescribe opioids when there are signs of abuse, in ''most cases of abuse of cocaine [and] methamphetamine'' the continued prescribing would not be within the standard of care because of the risk of death. RD, at 15; Tr. 248–50.

Prescribing doses of opioids with a high Morphine Milligram Equivalent (MME)[7] caries significant risks, including risk of death. RD, at 16; Tr. 257–58. Moreover, prescribing a combination of an opioid, a benzodiazepine, and a muscle relaxant (here, carisoprodol) is dangerous because together they produce a risk of synergistic respiratory depression; this ''leads to a patient that's heavily sedated and is [at] high risk for overdose and death.''[8] RD, at 16 (quoting Tr. 256–57). The combination, known as ''the cocktail, the Houston cocktail, the trinity, [or] the holy trinity,'' is ''sought after'' due to the ''particularly powerful high to the patient.'' RD, at 16 (quoting Tr. 256).

Documentation is a requirement under the Florida standard of care. RD, at 17; Tr. 160–61. ''The medical record shall . . . document the presence of one or more recognized medical indications for the use of a controlled substance.'' Fl. Stat. § 456.44(3)(a); RD, at 17; *see also* Fl. Stat. § 456.44(3)(f); Tr. 160–61. In addition to documenting the physical examination, ''the medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or co-existing diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse.'' RD, at 17 (quoting Tr. 160); Fla. Stat. § 456.44(3)(a). Documentation is also important for the purposes of periodic review of the plan and continuation of treatment by another physician. RD, at 17; Tr. 159–60. Generally, having a ''clear and complete and accurate'' medical record ''is really important for the practice of medicine.'' RD, at 17 (quoting Tr. 171).

The Florida standard of care does not create a separate standard for practitioners who ''inherit'' patients on controlled substance prescriptions. RD, at 12; Tr. 298–99. In other words, regardless of whether a patient is currently on controlled substance medications prescribed by another doctor, the Florida statute and standard of care require *any* practitioner to take a medical history and conduct an appropriate physical examination before prescribing and require practitioners to revisit prior plans on a regular basis to see if the controlled substance prescriptions are effective. RD, at 12; Tr. 213, 298–99.

The Patients

Patient J.H.

Regarding Patient J.H., the Agency finds that Respondent issued controlled substance prescriptions for morphine,

[6] An addiction medicine specialist is defined as a board-certified psychiatrist with a subspecialty certification or eligible for certification in addiction medicine, an addiction medicine physician certified or eligible for certification by the American Society of Addiction Medicine, or an osteopathic physician who holds a certificate of added qualification in addiction medicine through the American Osteopathic Association. RD, at 15 n.16; Fla. Stat. § 456.44(1)(b).

[7] MME is a standard that determines how powerful a particular medication is by comparing the prescribed medication and dosage to the original standard of morphine, historically used to manage pain. RD, at 16; Tr. 257–58.

[8] The Food and Drug Administration (FDA) has issued a warning—the so-called ''Black Box Warning''—regarding the risks of prescribing opioids and benzodiazepines in combination. RD, at 16; Tr. 173–80, 182; GX 15–17.

oxycodone, carisoprodol,[9] and diazepam [10] from July 2020 through February 2022 without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 17–21; GX 6, 20; Tr. 200, 262–63. Based on Dr. Lynch's testimony and the record as a whole, these prescriptions were issued without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care because Respondent failed to (1) establish an appropriate diagnosis to justify the controlled substance prescriptions (RD, at 17–18; GX 6, 20; Tr. 199, 201–03, 207, 211–14, 252, 255–56, 262); (2) establish an appropriate medical justification for high-risk combination prescriptions with high-risk MMEs (RD, at 20–21; GX 6, 20; Tr. 250, 253–54, 256–57, 259–61); (3) appropriately address potential signs of abuse and diversion, despite at least seven aberrant drug test results (RD, at 18–20; GX 6; Tr. 204, 217, 219, 221–25, 227–31, 233–35, 238, 246–48); and (4) maintain adequate medical records with sufficient documentation [11] (RD, at 21; GX 6; Tr. 261–62).

Patient C.K.

Regarding Patient C.K., the Agency finds that Respondent issued controlled substance prescriptions for hydrocodone,[12] carisoprodol, and alprazolam [13] from July 2020 through April 2022 without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 22–24; GX 8, 21; Tr. 312–15. Based on Dr. Lynch's testimony and the record as a whole, these prescriptions were issued without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care because Respondent failed to (1) establish an appropriate diagnosis to justify the controlled substance prescriptions (RD, at 22; GX 8, 21; Tr. 269–74); (2) adequately address signs of potential abuse and diversion, despite at least two aberrant drug test results (RD, at 22–23; GX 8; Tr. 277–86, 502–03); (3) appropriately address C.K.'s dangerous vital signs (RD, at 23; GX 8; Tr. 300–01, 303–07, 309); (4) establish an appropriate medical justification for high-risk combinations (RD at 23–24; GX 8, 21; Tr. 311–12); and (5) maintain adequate medical records with sufficient documentation (RD, at 24; GX 8; Tr. 308–09, 311–12).

Patient G.K.

Regarding Patient G.K., the Agency finds that Respondent issued controlled substance prescriptions for morphine, oxycodone, carisoprodol, and alprazolam from June 2020 through April 2022, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida.[14] *See* RD, at 25–27; GX 10, 22; Tr. 353–54.

Based on Dr. Lynch's testimony and the record as a whole, these prescriptions were issued without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care because Respondent failed to (1) establish an appropriate diagnosis to justify the controlled substance prescriptions (RD, at 25; GX 10, 22; Tr. 322–23, 325–26, 328–29, 331–37); (2) appropriately address G.K.'s dangerous vital signs (RD, at 25–26; GX 10; Tr. 344–47, 350–52); (3) establish an appropriate medical justification for high-risk combination prescriptions with high-risk MMEs (RD, at 26; GX 10, 22; Tr. 340–43, 352–54); and (4) maintain adequate medical records with sufficient documentation (RD, at 26; GX 10; Tr. 352–54).

Patient J.K.

Regarding Patient J.K., the Agency finds that Respondent issued controlled substance prescriptions for morphine, oxycodone, and lorazepam [15] from August 2020 through April 2022 and carisoprodol from July 2020 through January 2022 without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 27–30; GX 12, 23; Tr. 397–98. Based on Dr. Lynch's testimony and the record as a whole, these prescriptions were issued without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care because Respondent failed to (1) establish an appropriate diagnosis to justify the controlled substance prescriptions (RD, at 27–28; GX 12, 23; Tr. 359–67, 387–89); (2) adequately address signs of potential abuse and diversion, despite at least two aberrant drug test results (RD, at 28; GX 12; Tr. 370–78, 385, 496–97); (3) appropriately address J.K.'s dangerous vital signs (RD, at 29; GX 12; Tr. 391–96); (4) establish an appropriate medical justification for high-risk combination prescriptions with high-risk MMEs (RD, at 29; GX 12, 23; Tr. 389–90); and (5) maintain adequate medical records with sufficient documentation (RD, at 29–30; GX 12; Tr. 396–97).

II. Discussion

Under the CSA, ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). The CSA requires that the Agency consider the following factors for the public interest determination:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

[9] Carisoprodol is a Schedule IV controlled substance sold under the brand name Soma. Prehearing Ruling, at 2. The generic name (carisoprodol) is used in this decision.

[10] Diazepam is a Schedule IV controlled substance sold under the brand name Valium. Prehearing Ruling, at 2. The generic name (diazepam) is used in this decision.

[11] Respondent asserted that some documentation related to the four patients was missing from the medical files produced through the Government's administrative subpoenas and admitted into evidence as Government Exhibits 6, 8, 10, and 12. RD, at 36; Tr. 496–97, 500–07. The Agency has considered Respondent's claims regarding missing documentation. In agreement with the ALJ, any missing documentation does not change the outcome of this Decision. *See* RD, at 36–37. As Dr. Lynch reliably testified, any missing documents relate to only portions of the patients' treatment, and there are numerous other examples of prescribing that fell well below the standard of care. RD, at 37.

[12] Hydrocodone is a Schedule II controlled substance. Prehearing Ruling, at 2. Norco is a brand name medication that contains hydrocodone. *Id.* The generic name (hydrocodone) is used in this decision.

[13] Alprazolam is a Schedule IV controlled substance sold under the brand name Xanax. Prehearing Ruling, at 2; Tr. 182. The generic name (alprazolam) is used in this decision.

[14] The ALJ noted that Respondent also issued prescriptions to G.K. for the Schedule V controlled substance pregabalin (sold under the brand name of Lyrica). RD, at 25–26. As Respondent's prescribing of pregabalin was not included in the OSC/ISO, the Agency does not make any findings on the prescribing of this controlled substance.

[15] Lorazepam is a Schedule IV controlled substance sold under the brand name Ativan. Prehearing Ruling, at 3; Tr. 355. The generic name (lorazepam) is used in this decision.

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993). The inquiry is ''focuse[d] on protecting the public interest.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1), the Government's evidence in support of its *prima facie* case for revoking Respondent's registration is confined to Factors B and D. *See* RD, at 31 n.50 (finding that Factors A, C, and E do not weigh for or against the sanction sought by the Government).

Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). DEA regulations require that for a controlled substance prescription to be effective, it must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice. 21 CFR 1306.04(a).

Based on Dr. Lynch's reliable and persuasive expert opinion, the Agency finds that Respondent issued controlled substance prescriptions outside of the usual course of professional practice and beneath the Florida standard of care in violation of federal law. *See supra* Section I. Further, the Agency finds that Respondent violated Florida Statutes Section 456.44(3) with regard to Patients J.H., C.K., G.K., and J.K., by failing to take proper medical histories and conduct adequate medical examinations that supported prescribing controlled substances and/or failing to monitor the patients' medication compliance and address signs of abuse and/or diversion.[16] RD, at 34. The Agency also finds that for each of the four patients at issue, Respondent failed to maintain sufficiently detailed medical records that properly documented a diagnosis for each patient that supported prescribing controlled substances, thereby violating Florida Statutes Section 456.44(3) and Florida Administrative Code Rule 64B8–9.003.

Respondent's arguments fail to refute the evidence of unlawful and inappropriate prescribing. Although Respondent testified to his positive behavior of discharging approximately forty percent of one clinic's patients, such positive behavior cannot outweigh the evidence of prescribing contrary to the public interest. RD, at 33; Tr. 486, 489–90; *see, e.g., Ester Mark, M.D.,* 86 FR 16760, 16771 (2021); *Randall L. Wolff, M.D.,* 77 FR 5106, 5153 (2012). Nor do his broad arguments on the effects of the Government's enforcement decisions on pain clinics and the populations they serve undermine the Government's *prima facie* case. RD, at 34–35; *see Stephen E. Owusu, D.P.M.,* 87 FR 3343, 3351 n.21 (2022) (''the Agency has consistently held that community impact is not a relevant consideration under the public interest factors''); *George Pursley, M.D.,* 85 FR 80162, 80188 n.82 (2020); *Frank Joseph Stirlacci, M.D.,* 85 FR 45229, 45239 (2020).

Regarding the Florida standard of care, Dr. Lynch credibly and reliably refuted Respondent's various suggestions that he met that standard, including the arguments that (1) titrating patients off opioids creates a risk of suicide, especially if the patient has been on opioids or benzodiazepines for a considerable period of time and/or has comorbid conditions such as anxiety disorder[17] (Tr. 29–30, 36–40, 628–29); (2) the standard of care is different for patients who cannot afford testing or alternative treatments (Tr. 30–32, 45, 429–30, 564); and (3) the standard of care is different when a practitioner ''inherits'' patients who are already on opioids (Tr. 41–44). RD, at 35. Moreover, Respondent's version of the standard of care is not supported by the applicable Florida statutes. RD, at 35; *see* Fla. Stat. § 456.44(3).

In sum, and in agreement with the RD, the Agency finds that the record contains substantial evidence that Respondent prescribed and dispensed controlled substances in violation of both federal and state law. *See* RD, at 34; 21 CFR 1306.04(a); Fla. Stat. § 456.44(3); Fla. Admin. Code r. 64B8–9.003. In weighing Factors B and D, the Agency finds that the Government has established a *prima facie* case that Respondent committed acts that render his registration inconsistent with the public interest and support revocation of his registration. *See* 21 U.S.C. 823(g)(1).

III. Sanction

Where, as here, the Government has established grounds to revoke Respondent's registration, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a respondent has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, Respondent has failed to fully accept responsibility or offer any basis for the Agency to trust him, despite his past misconduct, with the responsibility of a registration. RD, at 37–39. Respondent did not accept responsibility for most of the areas where his prescribing history fell short of both the standard of care and his obligations under federal and Florida law. RD, at 38. Although Respondent acknowledged that he could have kept better notes and been more diligent at detailing patients' care, this limited acceptance of responsibility was inadequate in light of his repeated insistence that the prescriptions were justified and issued within the standard of care. RD, at 38, 40; Tr. 511, 518–20, 524, 529–30, 567, 600. Additionally, Respondent's attempt to shift blame for his misconduct to other employees of the clinic was unpersuasive and further highlighted the insufficiency of his

[16] While Respondent argued that the patients were being treated by a drug and alcohol counselor, that counselor was not a psychiatrist or an addiction medicine specialist under Florida law. RD, at 34; Tr. 586; *see* Fla. Stat. § 456.44; *see also* Tr. 168–69.

[17] Dr. Lynch referenced Respondent's own exhibits and other sources to discuss that there is also an association with a higher likelihood of suicide for patients who start taking opioids, patients who continue taking opioids, patients taking opioids at a high MME level, patients with signs of abuse or misuse of substances, and patients with mental health issues. RD, at 35; Tr. 458–61. Similarly, Dr. Lynch explained that while stopping a benzodiazepine prescription is associated with a higher likelihood of suicide, so too is prescribing benzodiazepines in the first instance and maintaining benzodiazepines. RD, at 35; Tr. 459, 461, 463. Moreover, Respondent's numerous other failures, including his lack of appropriate documentation of the justifications for continued prescribing, violated federal and Florida law.

limited acceptance of responsibility. RD, at 38; Tr. 503–04, 515, 590, 606–08.

While a respondent may present evidence of remedial measures taken to prevent reoccurrence of behavior inconsistent with registration, it is not necessary for the Agency to consider remedial measures when a respondent lacks unequivocal acceptance of responsibility. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5498 n.33 (2019); *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74801, 74810 (2015). The Agency need not consider remedial measures given the lack of acceptance of responsibility, nevertheless Respondent did not present any evidence of remedial measures for consideration. *See* RD, at 39; *Ahuja,* 84 FR at 5498 n.33; *Glick,* 80 FR at 74801, 74810.

In addition to acceptance of responsibility, the Agency looks to the egregiousness and extent of the misconduct, *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases), and considers both specific and general deterrence when determining an appropriate sanction. *Glick,* 80 FR at 74810. Here, Respondent's inappropriate and unlawful prescribing of controlled substances was egregious and warrants a sanction. *See* RD, at 39. The record contains substantial evidence that Respondent improperly issued an extensive number of prescriptions to four patients at two clinics over the course of nearly two years. RD, at 9, 17–30; Tr. 490–91; *see supra* Section I. Respondent prescribed controlled substances to patients without taking appropriate action to address clear and repeated signs of diversion and abuse. RD, at 39; *see supra* Section I. Even when patients arrived at their appointments with vital signs indicating a medical crisis or emergency, Respondent failed to address their dangerous medical situations and continued the same prescribing in violation of the applicable standard of care. RD, at 39; *see, e.g.,* Tr. 303, 345–46, 392. In this case, the Agency believes that revocation of Respondent's registration would deter Respondent and encourage the general registrant community to properly manage patients' treatment under the requirements of the CSA, including when faced with evidence of abuse and diversion. *See* RD, at 39.

In light of the above considerations, there is insufficient evidence that Respondent's behavior is unlikely to recur in the future such that the Agency can entrust him with a registration. In sum, Respondent has not offered sufficient mitigating evidence on the record to rebut the Government's case for revocation of his registration. RD, at 37–40. The public interest factors weigh in favor of revocation. RD, at 40. Accordingly, the Agency will order that Respondent's registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FF7471840 issued to Mark Fenzl, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Mark Fenzl, M.D., to renew or modify this registration, as well as any other pending application of Mark Fenzl, M.D., for additional registration in Florida. This Order is effective April 10, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on February 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–05099 Filed 3–8–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0147]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Census of State and Federal Adult Correctional Facilities

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics (BJS), Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 10, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laura Maruschak, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531, (email: *laura.maruschak@usdoj.gov;* telephone: 202–598–0802).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Census of State and Federal Adult Correctional Facilities (CCF) is part of the larger Bureau of Justice Statistics' (BJS) portfolio of establishment surveys that inform the nation on the characteristics of adult correctional facilities and persons sentenced to State and Federal prisons. The CCF collects data at the facility level. Data obtained are intended to describe the characteristics of confinement and community-based adult correctional facilities that are operated by (1) State correctional and BOP authorities or (2) private entities that primarily house inmates for State correctional or BOP authorities. The data collected inform issues related to

the operations of facilities and the conditions of confinement, including facility capacity and crowding, safety and security within prisons, staff workload, overall facility function, programming, work assignments, and special housing. All data are submitted on a voluntary basis. BJS plans to continue to use two instruments to collect data on each facility eligible for the CCF with the reference date of June 30, 2024.

Consistent with the most recent iteration of the CCF in 2019 the 2024 CJ–43A includes—

- Functions of the facility (*e.g.,* general confinement, community corrections, reception/diagnostic, medical treatment confinement)
- Percentage of inmates regularly permitted to leave the facility unaccompanied
- Whether the facility is administratively linked (*e.g.,* share budgets or staff) to other facilities and if they are, names of other facilities
- Type of authority operating the facility (*e.g.,* Federal, State, local, joint State and local)
- Whether the facility is authorized to house males, females, or both males and females
- Physical-security level of the facility
- Whether the facility has a designated geriatric unit for inmates of advanced age
- Whether the facility has a housing unit specifically designated for veterans
- Rated or design capacity of the facility
- Whether the facility operated under a State or Federal court order or consent decree that limited the number of inmates it could house
- Whether the facility operated under a State or Federal court order or consent decree for specific conditions of confinement
- Year that State or Federal court order or consent decree took effect
- Number of inmates, by sex on the reference date
- Number of inmates under the age of 18 by sex on the reference date
- Number of inmates by racial category on the reference date
- Number of inmates by custody-security level on the reference date
- Number of inmates by maximum sentence length (more than 1 year and 1 year or less) on the reference date
- Number of inmates who were non-U.S. citizens on the reference date
- Number of inmates being held in restrictive housing on reference date
- Number of inmates housed in protective custody, administrative segregation, segregated for disciplinary reasons, or other restrictive housing on the reference date
- Number of inmates held for Federal, State, local, and Tribal authorities on the reference date
- Number of staff (security and total), by sex on the reference date
- Number of security staff by racial category on the reference date
- Number of misconduct/disciplinary reports filed on inmates over a 1-year period
- Number of assaults against facility staff by inmates reported over a 1-year period
- Number of prisoner assaults by other inmates with and without serious injury reported over a 1-year period
- Number of disturbances that occurred at the facility over a 1-year period
- Whether the facility has a perimeter or barriers, or surveillance method to detect those attempting to escape
- Number of escapes by inmates that occurred at the facility over a 1-year period
- Number of walkaways by inmates that occurred at the facility over a 1-year period
- Types of work assignments available to inmates on the reference date
- Types of counseling or special programs available to inmates on the reference date
- Types of educational programs available to inmates on the reference date

BJS is proposing to add the following items to the 2024 CJ–43A, all of which are likely available from the same databases as existing data elements and should pose minimal additional burden to the respondents, while enhancing BJS's ability to characterize the corrections system and populations it serves:

- Number of vacant security staff positions
- Accessibility of technology/internet by inmates

Based on high burden, low utilization, and/or low response rates in the 2019 CCF, BJS is proposing to remove the following items from the CJ–43A:

- Number of payroll and nonpayroll staff by employment status (full-time and part-time)
- Number of security staff on average at facility by day shift, night shift, and overnight shift
- Number of shared security staff with other administratively linked facilities

Consistent with the most recent iteration of the CCF in 2019 the 2024 CJ–43B includes—

- Functions of the facility (*e.g.,* general confinement, community corrections, reception/diagnostic, medical treatment confinement)
- Percentage of inmates regularly permitted to leave the facility unaccompanied
- Whether the facility is administratively linked to other facilities and if they are, names of other facilities
- Type of authority operating the facility (*e.g.,* Federal, State, local, joint State and local)
- Whether the facility is authorized to house males, females, or both males and females
- Number of inmates by sex on the reference date
- Number of inmates under the age of 18 by sex on the reference date
- Number of inmates by racial category on the reference date
- Number of inmates who were non-U.S. citizens on the reference date
- Number of inmates held for Federal, State, local, and Tribal authorities on the reference date
- Number of walkaways by inmates that occurred at the facility over a 1-year period
- Types of counseling or special programs available to inmates on the reference date
- Types of educational programs available to inmates on the reference date

BJS uses the information gathered in CCF in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in criminal justice statistics, and the general public via the BJS website.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired. Proposed revisions include the addition of items to measure digital technology/internet accessibility of inmates and security staff vacancies.

2. *The Title of the Form/Collection:* Census of State and Federal Adult Correctional Facilities (CCF).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The CCF includes two forms: CJ–43A and CJ–43B. The sponsoring component is the Bureau of Justice Statistics.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public is State and Federal Government, and private entities contracted to house inmates for State and Federal

Government. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The CCF will collect data on approximately 1,670 State and Federal adult correctional facilities, of which, 1,160 are confinement and 510 are community-based facilities. Including follow-up time, the estimated burden for the CJ43–A is 180 minutes and 55 minutes for the CJ–43B. A central respondent may be responsible for coordinating, compiling, and submitted data for multiple facilities, particularly in the case of State DOCs, the BOP, and private corporations operating multiple facilities.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 3,947.5 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $151,979.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
CJ–43A	1,160	1	1,160	180	3,480
CJ–43B	510	1	510	55	467.5
Unduplicated Totals	1,670			235	3,947.5

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: March 6, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05087 Filed 3–8–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Anhydrous Ammonia Storage and Handling Standard

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 April 10, 2024.

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 are necessary for the safe handling and storage of anhydrous ammonia, a substance which is extremely dangerous to humans including toxic and corrosive. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 27, 2023 (8 FR 73877).

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: Anhydrous Ammonia Storage and Handling Standard.

OMB Control Number: 1218–0208.

Affected Public: Private Sector—Farms.

Total Estimated Number of Respondents: 2,500.

Total Estimated Number of Responses: 2,059.

Total Estimated Annual Time Burden: 342 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–05108 Filed 3–8–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Anhydrous Ammonia Storage and Handling Standard

Correction

In notice document 2024–04512 appearing on page 15617 in the issue of

Monday, March 4, 20024, make the following correction:

In the first column, under the heading **DATES**, in the third line ''March 4, 2024'' should read ''April 3, 2024''.

[FR Doc. C1–2024–04512 Filed 3–8–24; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Powered Platforms for Building Maintenance Standard

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 April 10, 2024.

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 requirements of the Powered Platforms for Building Maintenance Standard include written emergency action plans and work plans for training; affixing load rating plates to each suspended unit, labeling emergency electric operating devices with instructions for their use, and attaching a tag to one of the fastenings holding a suspension wire rope; the inspection and testing of, and written certification for, building-support structures, components of powered platforms, powered platform facilities, and suspension wire ropes; and the preparation and maintenance of written training certification records. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 3, 2023 (88 FR 68151).

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: Powered Platforms for Building Maintenance Standard.

OMB Control Number: 1218–0121.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 900.

Total Estimated Number of Responses: 181,612.

Total Estimated Annual Time Burden: 130,776 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–05039 Filed 3–8–24; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February March 11, 18, 25, and April 1, 8, 15, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of March 11, 2024

There are no meetings scheduled for the week of March 11, 2024.

Week of March 18, 2024—Tentative

There are no meetings scheduled for the week of March 18, 2024.

Week of March 25, 2024—Tentative

There are no meetings scheduled for the week of March 25, 2024.

Week of April 1, 2024—Tentative

There are no meetings scheduled for the week of April 1, 2024.

Week of April 8, 2024—Tentative

Tuesday, April 9, 2024

10:00 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Wesley Held: 301–287–3591).

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's

meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 15, 2024—Tentative

There are no meetings scheduled for the week of April 15, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 6, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–05158 Filed 3–7–24; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0004]

Privacy Act of 1974; Matching Program

AGENCY: Office of Personnel Management.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the reestablishment of a matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA) (Computer Matching Agreement 1071), the purpose of which is to assist OPM in meeting its legal obligation to offset its payments to disability annuitants, child survivor annuitants, and spousal survivor annuitants who receive benefits from OPM.

DATES: Please submit comments on or before April 10, 2024. The matching program will begin on April 26, 2024, unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months if the respective agency Data Integrity Boards determine that the conditions specified in 5 U.S.C. 552a(o)(D) have been met.

ADDRESSES: You may submit comments via mail to: Stanley McMichael, Resource Management Officer, Retirement Services and Management, Retirement Services, Office of Personnel Management, Room 3316, 1900 E. Street NW Washington, DC 20415 or via email at *Stanley.mcmichael@opm.gov.* You may also submit comments, identified by docket number and title, at the Federal Rulemaking Portal: *http://www.regulations.gov* by following the instructions for submitting comments. All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lisa Morgan, Retirement Services, Office of Personnel Management, at (202) 936–0866.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching Privacy Protection Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, including OMB Final Guidance Interpreting the Provision of Public Law 100–53 (published in the **Federal Register** on June 19, 1989 (54 FR 25818) and OMB Circular A–108, notice is hereby given of a re-established matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA). This matching program, Computer Matching Agreement 1071, is being reestablished to enable SSA to disclose benefit information regarding individuals who receive benefits from SSA under title II of the Social Security Act (Act).

OPM will match SSA's information with OPM's records to determine eligibility for these benefits and compute the benefits it provides to these individuals at the correct rate.

PARTICIPATING AGENCIES:

OPM and SSA.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

Legal authorities for the disclosures under this agreement are 5 U.S.C. 8442(f), 8443(a), 8452(a)(2)(A), and 8461(h)(1). The legal authority for SSA's disclosures under this agreement are section 1106 of the Social Security Act (42 U.S.C. 1306), the Privacy Act (5 U.S.C. 552a(b)), and section 7213(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 405 note).

PURPOSE(S):

The purpose of this agreement between OPM and SSA is to assist OPM in meeting its legal obligation to offset its payments to disability annuitants, child survivor annuitants, and spousal survivor annuitants who receive benefits from OPM.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are Disability Annuitants, Children Survivor Annuitants, and Spousal Survivor Annuitants. SSA will provide information about these individuals by referencing their master file of all individuals with Social Security numbers (SSN).

CATEGORIES OF RECORDS:

The categories of records involved in this matching program include the full name, SSN, date of birth, and necessary SVES indicator. In turn, SSA will match the record against SSA's Master Beneficiary Record (MBR) system of records, 60–0090, and provide OPM with individuals' beneficiary status under title II of the Act and associated benefit data from the MBR via the State Verification and Exchange System (SVES).

SYSTEM(S) OF RECORDS:

OPM's system of records involved in this matching program is OPM/Central-1, Civil Service Retirement and Insurance Published at 73 FR 15013 (March 20, 2008) and 87 FR 5874 (February 2, 2022). SSA's systems of records involved in this matching program are the Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022); the Master Beneficiary Record (MBR), 60–0090, last fully published at 71 FR 1826 (January 11, 2006), as updated at 72 FR 69723 (December 10, 2007); 78 FR 40542 (July 5, 2013); 83 FR 31250–31251 (July 3, 2018); and 83 FR 54969 (November 1, 2018).

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–05098 Filed 3–8–24; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0003]

Privacy Act of 1974; Matching Program

AGENCY: Office of Personnel Management.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the reestablishment of a matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA) (Computer Matching Agreement 1045), the purpose of which is to assist OPM in meeting its legal obligation to offset benefits payable by OPM to annuitants.

DATES: Please submit comments on or before April 10, 2024. The matching program will begin on April 20, 2024, unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months if the respective agency Data Integrity Boards determine that the conditions specified in 5 U.S.C. 552a(o)(D) have been met.

ADDRESSES: You may submit comments via mail to: Stanley McMichael, Resource Management Officer, Retirement Services and Management, Retirement Services, Office of Personnel Management, Room 3313–D, 1900 E. Street NW Washington, DC 20415 or via email at *Stanley.mcmichael@opm.gov.* You may also submit comments, identified by docket number and title, at the Federal Rulemaking Portal: *http://www.regulations.gov* by following the instructions for submitting comments. All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lisa Morgan, Retirement Services, Office of Personnel Management, at (202) 936–0866.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching Privacy Protection Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, including OMB Final Guidance Interpreting the Provision of Public Law 100–53 (published in the **Federal Register** on June 19, 1989 (54 FR 25818) and OMB Circular A–108, notice is hereby given of a re-established matching program between the Office of Personnel Management (OPM) and the Social Security Administration (SSA). This matching program, Computer Matching Agreement 1045, is being reestablished to enable SSA to disclose wage and self-employment income information to OPM. OPM will match SSA's information with OPM's records on disability retirees under age 60, disabled adult child survivors, certain retirees in receipt of a supplemental benefit under the Federal Employees Retirement System (FERS), and certain annuitants receiving a discontinued service retirement benefit under the Civil Service Retirement System (CSRS). The law limits the amount these retirees, survivors, and annuitants can earn while retaining benefits paid to them. Retirement benefits cease upon re-employment in Federal service for discontinued service annuitants. OPM will use the earnings and self-employment information from SSA to determine continued eligibility for benefits under OPM programs.

PARTICIPATING AGENCIES:

OPM and SSA.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

Legal authorities for the disclosures under this agreement are 5 U.S.C. 8337(d), 8341(a)(4)(B), 8344(a)(4)(b), and 8468, which establish earnings limitations for certain CSRS and FERS annuitants. The authority to terminate benefits may be found in 5 U.S.C. 8341(e)(3)(B) and 8443(b)(3)(B). The Internal Revenue Code (IRC), at 26 U.S.C. 6103 (l)(11), requires SSA to disclose tax return information to OPM upon request for purposes of the administration of chapters 83 and 84 of title 5 of the United States Code. SSA is authorized to verify the SSNs submitted by OPM under the Privacy Act (5 U.S.C. 552a(b)(3)); the Social Security Act (42 U.S.C. 1306); and SSA's privacy regulations (20 CFR part 401).

PURPOSE(S):

The purpose of this agreement between OPM and SSA is to assist OPM in meeting its legal obligation to offset benefits payable by OPM to annuitants. SSA will disclose wage and self-employment income data available from tax return information governed by the Internal Revenue Code (IRC), (26 U.S.C. 6103(l)(11)) information to OPM. OPM will use the wage and self-employment data obtained from SSA to match against OPM's records of disability retirees under age 60, disabled adult-child survivors, certain retirees in receipt of a supplemental benefit under the Federal Employees' Retirement System (FERS), and certain annuitants receiving a discontinued service retirement benefit under the Civil Service Retirement System (CSRS). Because the law limits the amount these individuals can earn and still retain the benefits paid to them by OPM, OPM will use the SSA information to determine an individual's continued eligibility to receive a benefit from OPM.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are those disability retirees under the age of 60, disabled adult-child survivors, certain retirees in receipt of a supplemental benefit under the FERS, and certain annuitants receiving a discontinued service retirement benefit under the CSRS who receive benefits from OPM. SSA will provide information about these individuals by referencing their master file of all individuals with Social Security numbers (SSN) and their file of earnings and self-employment records.

CATEGORIES OF RECORDS:

The categories of records involved in this matching program include the full name, SSN, date of birth, and the tax year for requested earnings for those individuals about who the match is being conducted. In turn, SSA will disclose the following records to OPM: In the case of a ''match'' response, SSA will disclose wage and self-employment data (employer identification number(s), employer address(es), wage amount(s) from Form W–2, and/or earnings amount(s) from self-employment, annual total wages, and earnings report type) to OPM. SSA will also provide a death indicator if the individual is listed as deceased in SSA records. In the case of a ''no-match'' response, SSA will disclose the reason for the ''no match'', which may include the following: SSN not in file (never issued to anyone); Name and DOB

match; gender code does not; Name and gender code match; DOB does not; Name matches, DOB, and gender code do not; Name does not match; DOB and gender code not checked Death indicator (yes/no) if applicable; gender is not required to perform SSN verifications by SSA; it is optional.

SYSTEM(S) OF RECORDS:

OPM's system of records involved in this matching program is OPM/Central-1, Civil Service Retirement and Insurance Published at 73 FR 15013 (March 20, 2008) and 87 FR 5874 (February 2, 2022). SSA's systems of records involved in this matching program are the Master Files of Social Security Number Holders and SSN Applications, referred to as the Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022), and the Earnings Recording and Self Employment Income System, 60–0059 (referred to as the Master Earnings File (MEF)) last fully published at 71 FR 1819 (January 11, 2006) and amended at 78 FR. 40542 (July 5, 2013), and 83 FR 54969 (November 1, 2018).

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–05097 Filed 3–8–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–199 and CP2024–205; MC2024–201 and CP2024–207; MC2024–202 and CP2024–208]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–199 and CP2024–205; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 47 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 4, 2024; [2] *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* March 13, 2024.

2. *Docket No(s).:* MC2024–201 and CP2024–207; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 49 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* March 13, 2024.

3. *Docket No(s).:* MC2024–202 and CP2024–208; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 197 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* March 13, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–05128 Filed 3–8–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99677; File No. SR–NYSE–2024–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.19

March 5, 2024.

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 February 21, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 the Exchange. The Commission is publishing this

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[2] A technical error resulted in this filing not appearing in the Commission's dockets system as expected. This led to a delay in processing and noticing the filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Rule 7.19 to make additional pre-trade risk controls available to Entering Firms and Clearing Firms. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.19 to make additional pre-trade risk controls available to Entering Firms and Clearing Firms.

Background and Proposal

In 2020, in order to assist Member organizations' efforts to manage their risk, the Exchange amended its rules to add Rule 7.19 (Pre-Trade Risk Controls),[3] which established a set of optional pre-trade risk controls by which Entering Firms and their designated Clearing Firms [4] could set credit limits and other pre-trade risk controls for an Entering Firm's trading on the Exchange and authorize the Exchange to take action if those credit limits or other pre-trade risk controls are exceeded (the ''2020 Risk Controls''). These pre-trade risk controls include a Gross Credit Risk Limit, which is defined in Rule 7.19(b)(1) as ''a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both buy and sell orders are counted as positive values.'' The current version of Rule 7.19(b)(1) specifies that both open and executed orders are considered: ''[f]or purposes of calculating the Gross Credit Risk Limit, unexecuted orders in the Exchange Book, orders routed on arrival pursuant to Rule 7.37(a)(1), and executed orders are included.''

The Exchange has recently received several requests from market participants to create two additional Gross Credit Risk Limit risk controls: one that includes only open orders and another that includes only executed orders. Market participants have explained that Entering Firms and Clearing Firms would benefit from having more granular gross credit risk controls available, which would allow them to set limits and breach actions based solely on open orders or executed orders, in addition to the Exchange's existing Gross Credit Risk Limit that includes both open and executed orders.

The Exchange notes that the MIAX Pearl equities exchange (''MIAX Pearl'') currently offers risk controls substantially similar to those proposed here. Specifically, MIAX Pearl offers its ''Equity Members'' and their ''Clearing Members'' the option to use a ''Gross Notional Trade Value'' risk check, which includes only executed orders, and a ''Gross Notional Open Value'' risk check, which includes only unexecuted orders, in addition to a ''Gross Notional Open and Trade Value'' risk check, for which both executed and unexecuted orders are included.[5] As such, market participants are already familiar with these various gross credit risk checks, such that the ones proposed by the Exchange in this filing are not novel.

In light of these requests, the Exchange proposes to amend Rule 7.19(b)(1) to rename the existing Gross Credit Risk Limit as ''Gross Credit Risk Limit—Open + Executed,'' and to add two additional risk limits: ''Gross Credit Risk Limit—Open Only'' and ''Gross Credit Risk Limit—Executed Only.''

Specifically, the Exchange proposes to amend and reorganize Rule 7.19(b)(1) as follows. First, the Exchange would amend the language in the first sentence of the rule to refer to plural Gross Credit Risk Limits, instead of just one. At the end of the first sentence, the Exchange would add that ''[a]vailable Gross Credit Risk Limits include'' the three types described in new sub-sections (A), (B), and (C).

Proposed sub-section (A) would define the ''Gross Credit Risk Limit—Open + Executed'' risk check to include unexecuted orders in the Exchange Book, orders routed on arrival pursuant to Rule 7.37(a)(1), and executed orders (just as the current Gross Credit Risk Limit does).

Proposed sub-section (B) would define the ''Gross Credit Risk Limit—Open Only'' risk check to include only unexecuted orders in the Exchange Book and orders routed on arrival pursuant to Rule 7.37(a)(1).

Proposed sub-section (C) would define the ''Gross Credit Risk Limit—Executed Only'' risk check to include executed orders only.

In addition, the Exchange proposes to make a conforming change to section (c)(1)(B) of the rule, to make plural the current singular reference to ''Gross Credit Risk Limit.''

Commentary .03

The Exchange also proposes to update paragraph (a) of Commentary .03 regarding Floor brokers. The current version of paragraph (a) of Commentary .03, implemented in 2023, explains that when a customer of a Floor broker firm is a member organization, either that customer or the Floor broker firm may be considered the ''Entering Firm'' for the purposes of setting the 2020 Risk Controls (which appear in paragraphs (b)(1) and (b)(2)(A) and the Kill Switch Actions sections of the current rule) for the customer's trading activity on the Exchange. Under the current rule, the 2023 Risk Controls (which appear in paragraphs (b)(2)(B) through (b)(2)(F)) are not available to Floor brokers, but the Exchange noted in its filing for the 2023 Risk Controls that it would file an updated rule change when they become available.[6]

The Exchange has recently completed a technology upgrade to enable Floor brokers to connect with the Exchange via Pillar gateways, such that the 2023 Risk Controls are available to Floor brokers when they are identified as the ''Entering Firm.'' Similarly, the new Pre-Trade Risk Controls proposed in this filing would also be available to Floor brokers when they are identified as the ''Entering Firm.''

In light of these changes, the Exchange proposes to delete the current text of paragraph (a) of Commentary .03 and replace it with updated text. First, in light of the fact that the original Gross

[3] *See* Securities Exchange Act Release No. 88776 (April 29, 2020), 85 FR 26768 (May 5, 2020) (SR–NYSE–2020–17). Later, in 2023, the Exchange amended its rules to make additional pre-trade risk controls available to Entering Firms (the ''2023 Risk Controls''). *See* Securities Exchange Act Release No. 97101 (March 1, 2023), 88 FR 14213 (March 7, 2023) (SR–NYSE–2023–14).

[4] The terms ''Entering Firm'' and ''Clearing Firm'' are defined in Rule 7.19.

[5] *See* MIAX Pearl Rule 2618(a)(2)(A), (C), and (E).

[6] *See* Securities Exchange Act Release No. 97101 (March 1, 2023), 88 FR 14213 (March 7, 2023) (SR–NYSE–2023–14).

Credit Risk Check that was part of the 2020 Risk Controls (current paragraph (b)(1)) would now appear as ''Gross Credit Risk Limit—Open + Executed'' in paragraph (b)(1)(A), the updated text would specify that: ''Regarding a Floor broker's trading activity on the Exchange on behalf of a customer that is a member organization (''Customer''), either the Floor broker or the Customer may identify itself as the ''Entering Firm'' for purposes of setting the Pre-Trade Risk Controls in paragraphs (b)(1)(A) and (b)(2)(A) or Kill Switch Actions.'' Second, the updated text would reflect that all of the other Pre-Trade Risk Controls in Rule 7.19, including the ones proposed in this rule filing, would be available to Floor brokers when they are identified as the ''Entering Firm.'' Specifically, the Commentary would state that ''[f]or the other Pre-Trade Risk Controls described in this rule, the Floor broker must be identified as the ''Entering Firm.''

As with the Exchange's existing risk controls, use of the pre-trade risk controls proposed herein would be optional. The Exchange proposes no other changes to Rule 7.19 or its Commentary.

Continuing Obligations of Member Organizations Under Rule 15c3–5

The proposed Pre-Trade Risk Controls described here are meant to supplement, and not replace, the member organizations' own internal systems, monitoring, and procedures related to risk management. The Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of a member organization's needs, the controls are not designed to be the sole means of risk management, and using these controls will not necessarily meet a member organization's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3–5 under the Act[7] (''Rule 15c3–5'')). Use of the Exchange's Pre-Trade Risk Controls will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the member organization.[8]

Timing and Implementation

The Exchange anticipates implementing the proposed change in the first quarter of 2024 and, in any event, will implement the proposed rule change no later than the end of June 2024. The Exchange will announce the timing of such changes by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed additional Pre-Trade Risk Controls would provide Entering Firms and Clearing Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. The proposed additional Pre-Trade Risk Controls are not novel; they are based on existing risk settings already in place on MIAX Pearl and market participants are already familiar with the types of protections that the proposed risk controls afford.[11] As such, the Exchange believes that the proposed additional Pre-Trade Risk Controls would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change will protect investors and the public interest because the proposed additional Pre-Trade Risk Controls are a form of impact mitigation that will aid Entering Firms and Clearing Firms in minimizing their risk exposure and reduce the potential for disruptive, market-wide events. The Exchange understands that member organizations implement a number of different risk-based controls, including those required by Rule 15c3–5. The controls proposed here will serve as an additional tool for Entering Firms and Clearing Firms to assist them in identifying any risk exposure. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms and Clearing Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

The Exchange believes that the proposed revision of paragraph (a) of Commentary .03 will remove impediments to and perfect the mechanism of a free and open market and a national market system by adding specificity to inform market participants of how the Pre-Trade Risk Controls apply to Floor brokers. The proposed revision informs market participants that, with respect to a Floor broker's trading activity on the Exchange on behalf of a customer that is a member organization, all of the Pre-Trade Risk Controls are now available when the Floor broker is identified as the ''Entering Firm,'' while the original 2020 Risk Controls remain available when either the Floor broker or the customer is identified as the ''Entering Firm.''

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's member organizations because use of the proposed additional Pre-Trade Risk Controls is optional and is not a prerequisite for participation on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal will have a positive effect on competition because, by providing Entering Firms and Clearing Firms additional means to monitor and control risk, the proposed rule will increase confidence in the proper functioning of the markets. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms and Clearing Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. As a result, the level of competition should increase as public confidence in the markets is solidified.

[7] *See* 17 CFR 240.15c3–5.

[8] *See also* Commentary .01 to Rule 7.19, which provides that ''[t]he pre-trade risk controls described in this Rule are meant to supplement, and not replace, the member organization's own internal systems, monitoring and procedures related to risk management and are not designed for compliance with Rule 15c3–5 under the Exchange Act. Responsibility for compliance with all Exchange and SEC rules remains with the member organization.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSE–2024–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–10, and should be submitted on or before April 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05053 Filed 3–8–24; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35152; File No. 812–15464]

Antares Private Credit Fund, et al.

March 5, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under section 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Antares Private Credit Fund, Antares Strategic Credit Fund, Antares Capital Advisers LLC, Antares Capital Credit Advisers LLC, Antares CLO 2017–1, Ltd., Antares CLO 2017–2, Ltd., Antares CLO 2018–1, Ltd., Antares CLO 2018–2, Ltd., Antares CLO 2018–3, Ltd., Antares CLO 2019–1, Ltd., Antares CLO 2019–2, Ltd., Antares CLO 2020–1, Ltd., Antares CLO 2021–1, Ltd., Antares CLO 2023–1, Ltd., Antares CLO 2023–2, Ltd., Orion CLO 2023–1, Ltd., Orion CLO 2023–2, Ltd., AUF Funding LLC, Antares Canada SMA LP, Antares Credit Fund I LP, Antares Credit Opportunities IV LLC, Antares Credit Opportunities MA I LLC, Antares Credit Opportunities MA II LP, Antares Credit Opportunities MA III LLC, Antares Credit Opportunities MA V LP, Antares Senior Loan Master Fund LP, Antares Senior Loan Parallel Master Fund LP, Antares Unitranche Master Fund I LP, Antares Credit Opportunities VI LLC, Antares Credit Opportunities CA LLC, Antares Strategic Credit I Master LP, Antares K Co-Investment Fund LP, Antares K Co-Investment Fund II LP, Antares Senior Loan Master Fund II LP, Antares Senior Loan Parallel Master Fund II LP, WM Alternatives Antares Private Senior Lending Fund LLC, Antares Senior Loan EF Master II (Cayman) LP, Antares Vesta Funding LP, Antares Assetco LP, Antares Complete Financing Solution LLC, Antares Holdings LP, Antares Venus Funding LP, Antares Senior Loan Parallel Fund SPV LLC, Antares Senior Loan Parallel Fund II SPV LLC, Antares Credit Opportunities Funding IV LLC,

Antares Credit Opportunities Funding VI LLC, Antares Strategic Credit SPV LLC, Antares Strategic Credit I SPV LLC, Antares Credit Opportunities CA SPV I LLC, Antares Credit Opportunities CA SPV II LLC, Antares Credit Opportunities CA SPV III LLC, Antares Credit Opportunities CA SPV IV LLC, Antares Capital 2 LP, Antares Equity Holdings LLC, A–STAR Equity Holdings LLC, CPPIB Credit Investments Inc., CPPIB Credit Investments II Inc., CPPIB Credit Investments III Inc., CPPIB Credit Structured North America II, Inc., CPPIB European Credit Inc., CPPIB European Credit II Inc., Antares Senior Loan EF II SPV LLC, Antares Senior Loan Parallel Fund II SPV B LLC, Antares Liquid Credit Strategies LLC, and WM Alternatives Antares Private Senior Lending Fund SPV LLC.

FILING DATES: The application was filed on May 10, 2023, and amended on September 13, 2023 and February 26, 2024.

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 Applicants 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 April 1, 2024 and should be accompanied by proof of service on the 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 at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Michael B. Levitt, *mike.levitt@antares.com,* and William J. Bielefeld, *william.bielefeld@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, or Terri G. Jordan, 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' Second Amended and Restated Application, dated February 26, 2024, 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 *http://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.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05035 Filed 3–8–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, March 14, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 7, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–05209 Filed 3–7–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99671]

Notice of Intention To Cancel Registration of Certain Municipal Securities Dealers Pursuant to Section 15B(c)(3) of the Securities Exchange Act of 1934

March 5, 2024.

Notice is given that the Securities and Exchange Commission (''Commission'') intends to issue an order or orders, pursuant to Section 15B(c)(3) of the Securities Exchange Act of 1934 (''Act''), cancelling the registrations of the municipal securities dealers (hereinafter referred to as ''registrants'') whose names appear in the attached Appendix.

Section 15B(c)(3) of the Act provides, in pertinent part, that if the Commission finds that any municipal securities dealer registered under Section 15B is no longer in existence or has ceased to do business as a municipal securities dealer, the Commission, by order, shall cancel the registration of such municipal securities dealer.

The Commission finds that each registrant listed in the attached Appendix has not filed any municipal securities dealer form submissions with the Commission through the Commission's Electronic Data Gathering and Retrieval (''EDGAR'') system since November 2016. Accordingly, the Commission finds that each registrant listed in the attached Appendix either is no longer in existence or has ceased to do business as a municipal securities dealer.

Notice is also given that any interested person may, by April 1, 2024, at 5:30 p.m. eastern time, submit to the Commission in writing a request for a hearing on the cancellation of the registration of any registrant listed in the attached Appendix, accompanied by a statement as to the nature of such person's interest, the reason for such

request, and the issues, if any, of fact or law proposed to be controverted, and such person may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed to the Commission's Secretary at *Secretarys-Office@sec.gov* with the phrase ''Notice of Intention to Cancel Municipal Securities Dealer Registration'' in the subject line.

At any time after April 1, 2024, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the attached Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with Rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For Further Information Contact: Wade Gallagher, Branch Chief, Registrations Branch, Division of Examinations, 100 F Street NE, Washington, DC 20549, at *EXAMSRegistrationsInquiries@sec.gov* or at (202) 551–7250.

For the Commission, by the Division of Examinations, pursuant to delegated authority.[1]

Sherry R. Haywood,

Assistant Secretary.

Appendix

Registrant name	SEC ID No.
Alabama Conditional Bank	086–01333
Capitol City Bank & Trust Co	086–01340
City National Bank of New Jersey, Municipal Securities Division (a.k.a. City Bank of New Jersey, Municipal Securities Division)	086–01349
Commonwealth National Bank d/b/a Commonwealth Capital Resource Group	086–01344
First Partners Bank Investment Division	086–01341
Liberty Capital Markets	086–01347
Sterling Investments, a division of Sterling Bank	086–01321
SunTrust Bank, Municipal Securities Division	086–01346

[FR Doc. 2024–05033 Filed 3–8–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0335]

Serra Capital (SBIC) III, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 05/05–0335 issued to Serra Capital (SBIC) III, L.P., said license is hereby declared null and void.

Bailey Devries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–05050 Filed 3–8–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–1922; Summary Notice No. 2024–09]

Petition for Exemption; Summary of Petition Received; Northrop Grumman Systems Corporation

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 1, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–1922 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

[1] 17 CFR 200.30–18(j)(3)(i).

FOR FURTHER INFORMATION CONTACT: Jimeca Callaham at (202) 267–0312, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on 1 March, 2024.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–1922.

Petitioner: Northrop Grumman Systems Corporation.

Section(s) of 14 CFR Affected: § 91.319(a)(2).

Description of Relief Sought: To permit Northrop Grumman Systems Corporation to operate experimental aircraft for the purpose of research and development (R&D) carrying persons essential to carry out the R&D tests.

[FR Doc. 2024–05024 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0319; Summary Notice No. 2024–07]

Petition for Exemption; Summary of Petition Received; American Drone LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 1, 2024.

ADDRESSES: Send comments identified by docket number FAA–2022–0319 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Andrews, 202–267–8181, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on 1 March, 2024.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0319.

Petitioner: American Drone LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b), 137.19(c), 137.19(d), 137.19(e)(2)(ii), 137.19(e)(2)(iii), 137.19(e)(2)(v), 137.31, 137.33, 137.41(c), and 137.42.

Description of Relief Sought: American Drone LLC seeks to conduct limited beyond visual line of sight (BVLOS) agricultural Unmanned Aircraft System (UAS) operations with no visual observer (VO) when spraying fields that are surrounded by varying topology or boundaries of taller tress that obscure the view of the field.

[FR Doc. 2024–05026 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2016–4042; Summary Notice No. 2024–08]

Petition for Exemption; Summary of Petition Received; Wittman Regional Airport

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 1, 2024.

ADDRESSES: Send comments identified by docket number FAA–2016–4042 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records

notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on 1 March, 2024.

Brandon L. Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–4042.

Petitioner: Wittman Regional Airport.

Section of 14 CFR Affected: § 139.101.

Description of Relief Sought: Wittman Regional Airport seeks an exemption from 14 Code of Federal Regulations § 139.101, general requirements for airport certification. The relief sought under the exemption is to permit certain unscheduled air carrier operations at KOSH at limited times during the week of Experimental Aircraft Association (EAA) AirVenture Oshkosh, July 22 through July 28, 2024.

[FR Doc. 2024–05025 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2024–0004; Notice No. 2024–02]

Hazardous Materials: Request for Comments on Issues Concerning International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: PHMSA and the U.S. Nuclear Regulatory Commission are jointly seeking comments on issues concerning requirements in the International Atomic Energy Agency (IAEA) regulations for the safe transport of radioactive materials. The IAEA is considering revisions to their regulations as part of its periodic review cycle for a new edition of those regulations.

DATES: Submit comments by April 15, 2024. Comments received after this date will be considered if it is practical to do so; however, we are only able to assure consideration for proposals received on or before this date.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2022–0008) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Fax: 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov*.

Confidential Business Information (CBI): 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Rick Boyle, Sciences and Engineering Division, 202–657–1301, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Boyle, Sciences and Engineering Division, 202–657–1301, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

The International Atomic Energy Agency (IAEA) works with its Member States and multiple partners worldwide to promote safe, secure, and peaceful nuclear technologies. The IAEA established and maintains an international standard, *Regulations for the Safe Transport of Radioactive Material (SSR–6 (Rev. 1)),* to promote the safe and secure transportation of radioactive material. The IAEA periodically reviews and, as deemed appropriate, revises its regulations to reflect new information and accumulated experience. The Department of Transportation (DOT) is the U.S. competent authority for radioactive material transportation matters. The U.S. Nuclear Regulatory Commission (NRC) provides technical support to DOT in this regard, particularly regarding Type B and other fissile transportation packages.

On February 17, 2022, PHMSA and NRC issued a joint **Federal Register** notice [1] to solicit comments on revisions to the IAEA regulations. Comments received from that notice were evaluated, edited, and ultimately drafted into a proposed revision of the IAEA regulations alongside recommendations from DOT and NRC.

[1] *https://www.federalregister.gov/documents/2022/02/17/2022-03393/hazardous-materials-request-for-comments-on-issues-concerning-international-atomic-energy-agency.*

To assure opportunity for public participation in the international regulatory development process, DOT and NRC are soliciting comments and information pertaining to the draft proposed changes to the IAEA regulations. Submitted comments will be reviewed and added to the draft if considered appropriate by DOT and NRC staff. Comments added to the proposed draft do not constitute a decision to revise SSR–6 (Rev. 1).

The focus of this solicitation is to identify issues or concerns with a proposed revised draft of SSR–6 (Rev. 1). Comments requesting changes to paragraphs that do not already have proposed changes in the linked draft will not be considered. That draft (number DS543) can be found online at *https://www.iaea.org/resources/safety-standards/draft-standards-for-ms-comment*.

The IAEA requests that any proposal for a change in SSR–6 (Rev. 1) should demonstrate that the proposed change is:

- Required to ensure safety and to protect people, property, and the environment from harmful effects of ionizing radiation during the transport of radioactive material.
- Needed to define or redefine the level of protection of people, property, and the environment from harmful effects of ionizing radiation during the transport of radioactive material.
- Required for consistency within SSR–6 (Rev. 1).
- Required as a result of advances in technology.
- Needed to improve implementation of SSR–6 (Rev. 1).

The IAEA also requests that a submission of an identified problem in SSR–6 (Rev. 1) for which new text is not proposed should also demonstrate a clear link to the criteria outlined above. Comments and proposed changes should reference the particular paragraphs of concern in SSR–6 (Rev. 1).

This information, and any associated discussions, will assist DOT in examining the full range of views and alternatives as the Agency develops proposals to be submitted to the IAEA for consideration. DOT has not yet fully harmonized its U.S. regulations with the 2012 and 2018 editions of SSR–6. DOT will follow its normal rulemaking procedures in any action to harmonize requirements for domestic and international transportation of radioactive materials. This call for input to the IAEA process is separate from any future or current domestic rulemakings.

II. Public Participation

PHMSA and the NRC are jointly seeking comments on issues concerning the changes they have drafted to the requirements in SSR–6 (Rev. 1). The IAEA is considering revisions to the SSR–6 (Rev. 1) regulations as part of its periodic review cycle for a new edition of those requirements. Proposals must be submitted in writing (electronic file in Microsoft Word format preferred).

DOT and NRC will review the proposed issues and identified problems. Proposed issues and identified problems from all Member States and International Organizations will be initially considered at the IAEA Transport Safety Standards Committee (TRANSSC) Meeting to be convened by IAEA on June 10–14, 2024, in Vienna, Austria. The subsequent meeting of TRANSSC, to be held in November 2024, will determine whether the aggregate of the accepted proposed changes amounts to a change in requirements that is important in terms of safety. If this is the case, a revision of SSR–6 (Rev. 1) will be initiated by the IAEA. If there is no safety imperative, the issues agreed upon will be considered during the next review cycle scheduled to start in 2027.

Issued in Washington, DC, on March 4, 2024.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–05084 Filed 3–8–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 10, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 15, 2024.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21623–N	Evergreen Goodwill of Northwest Washington.	172.600, 172.201, 172.300, 172.702, 172.400, 172.500.	To authorize the transportation in commerce of hazardous materials intermingled with non-hazardous materials that have been donated at remote donation sites as not subject to the requirements of the HMR. (mode 1).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21701–N	Shijiazhuang Enric Gas Equipment Co., Ltd.	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a).	To authorize the requalification of DOT 3A, 3AA, 3AX, 3AAX, 3T and UN ISO 11120 cylinders by Acoustic Emission and Ultrasonic Examination (AE/UE) method in place of the internal visual inspection and the hydrostatic test method. (modes 1, 2, 3).
21704–N	KULR Technology Corporation	172.700(a), 172.200, 173.185(b).	To authorize the manufacture, mark, sale, and use of specially designed thermal runaway shield (TRS) packagings for the transportation in commerce of end-of-life lithium-ion cells and batteries and lithium metal cells and batteries and those contained in and packed with equipment shipped for recycling, reuse, refurbishment, repurposing or evaluation. (modes 1, 2).
21711–N	Maserati North America, Inc	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21712–N	Apple Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21713–N	Lockheed Martin Corporation	173.301(f)(1), 173.302(a)(1)	To authorize the transportation in commerce of non-DOT specification cylinders containing compressed neon installed in a spacecraft. (mode 1).
21716–N	Kraken Robotics US Inc	172.101(j), 173.185(a)(1)	To authorize the transportation in commerce of prototype and low production lithium ion batteries aboard cargo-only aircraft. (mode 4).
21718–N	UFP Packaging, LLC	178.935(c)(1)	To authorize the manufacture, mark, sale, and use of UN 50D large packagings that have a volumetric capacity greater than 3,000 liters. (modes 1, 3).
21719–N	ERCO Worldwide (USA) Inc	172.302(c), 173.26, 173.314(c), 179.13(b).	To authorize the transportation in commerce of tank cars containing chlorine in quantities that exceed the specified limits. (mode 2).
21721–N	WAE Technologies Limited	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
21722–N	Olin Winchester LLC	172.301(c), 173.56(a)(2), 173.56(b).	To authorize the transportation in commerce of Class 1 materials that have not been approved in accordance with 49 CFR 173.56(b). (modes 1, 2, 3, 4, 5).
21723–N	LeoStella LLC	173.185(a)(1), 173.302a	To authorize the transportation in commerce of satellites containing low production lithium batteries and non-DOT specification cylinders filled with xenon by motor vehicle and cargo-only aircraft. (modes 1, 4).
21726–N	Towa Industries, Inc	173.6, 173.6(a)(1), 173.6(a)(1)(ii).	To authorize the transportation in commerce of battery powered generators under the materials of trade exception. (mode 1).

[FR Doc. 2024–05034 Filed 3–8–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before March 26, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal

hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 15, 2024.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11194–M	Mission Systems Orchard Park Inc.	172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit to authorize additional hazardous materials. (modes 1, 2, 3, 4, 5).
15322–M	Hexagon Digital Wave LLC	180.209(a), 180.205(c), 180.205(f), 180.205(g), 180.213, 173.302a(b)(2), 173.302a(b)(5).	To modify the special permit to authorize agents of Hexagon Digital Wave, LLC to perform inspection and testing of cylinders. (modes 1, 2, 3, 4, 5).
16172–M	Entegris, Inc	173.301(f)	To modify the special permit to authorize additional hazardous materials. (modes 1, 3).
20301–M	Tesla, Inc	173.185(a)(1), 173.185(b)(3)(i), 173.185(b)(3)(ii).	To modify the special permit to authorize an additional cell type. (mode 4).
20396–M	Hexagon Digital Wave LLC	180.205(g)	To modify the special permit to authorize agents of Hexagon Digital Wave, LLC to perform inspection and testing of cylinders. (modes 1, 2, 3).
21360–M	ABG Bag, Inc	173.12(b)(2)(ii)(C), 178.707(d)	To modify the special permit to authorize cargo vessel. (mode 1).
21408–M	GFS Chemicals, Inc	173.158(f)(3)	To modify the special permit to authorize an alternative manufacturer for the 500 mL and 2.5 L inner packagings. (modes 1, 3).
21470–M	Honeywell Intellectual Properties Inc.	173.302a(a)(1)	To modify the special permit to remove revision letters to provide flexibility. (mode 1).
21543–M	Consumer Product Safety Commission, United States.	173.185(a)(1)	To modify the special permit to authorize an additional hazardous material and packaging. (mode 1).
21546–M	Space Exploration Technologies Corp.	176.178(b), 176.180, 176.182(g), 176.190, 176.138(b).	To modify the special permit's operational controls. (modes 1, 3).
21607–M	Amazon.com, Inc	172.200(b)(3), 172.315(a)(2)	To modify the special permit to authorize shipments of division 5.2 hazardous materials, remove the maximum ferry route limitation of 35 miles, remove dangerous goods manifest requirements, and to modify shipment reporting requirements to allow product-type details to be provided in lieu of proper shipping name information. (modes 1, 2).
21650–M	Bollore Logistics Germany GmbH.	172.400, 172.101(j), 172.300, 173.185(a)(1), 173.185(e)(7), 173.301(f), 173.302a(a)(1).	To modify the special permit to authorize a different transportation route. (modes 1, 4).
21663–M	Orbion Space Technology, Inc	172.203(a), 172.301(c), 173.301(f)(1), 173.302(a)(1).	To modify the special permit to authorize an additional packaging and to authorize an increase in the filling pressure. (mode 1).

[FR Doc. 2024–05031 Filed 3–8–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 10, 2024.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 16, 2024.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
11818–M	Raytheon Company	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize additional packaging.
12135–M	Daicel Safety Systems Inc	173.301(a)(1), 173.302a, 178.65(c)(3).	To modify the special permit for use up to 15 years after the date of manufacture.
15980–M	Windward Aviation Inc	172.400, 172.200, 172.300, 173.1, 173.27, 175.33, 175.75.	To modify the special permit to exempt shipments from 49 CFR 172.400 and from 49 CFR 175.33.
16178–M	National Aeronautics and Space Administration.	173.301, 173.302(a), 173.302	To modify the special permit to authorize the transportation of hazardous materials in cylinders that do not meet UN standards or DOT specifications.
20638–M	Sonoco Products Company	173.306(a)(3), 173.302(a)	To modify the special permit to authorize the inner containers to be marked ''DOT–2P'' or ''DOT–2Q'' even if the inner container does not meet the applicable DOT specification.
21179–M	Airgas USA, LLC	180.209	To modify the special permit to modify the test method.
21222–M	Bren-Tronics, Inc	172.101(j), 173.185(b)(1)	To modify the special permit to reflect changes to the design of the Brenergy Battery series.
21290–M	Orion Engineered Carbons LLC.	171.23(a)(1), 171.23(b)(10), 173.314.	To modify the special permit to authorize an increase in the annual number of shipments.
21379–M	Trane U.S. Inc	173.306(e)(1), 173.306(e)(2)	To modify the special permit to authorize reconditioned (used) refrigerator machines or components thereof.
21501–N	Luxfer Inc	173.301(f), 173.302(a)	To authorize the manufacture, mark, sale, and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinder with a non-metallic and non-load sharing plastic liner that meets the ISO 11119–3 standard, except as specified herein.
21521–M	Honda Motor Co., Ltd	173.302(a)(1)	To modify the special permit to authorize the COPVs to be shipped in an additional outer packaging.
21650–N	Bollore Logistics Germany GmbH.	172.400, 172.101(j), 172.300, 173.185(a)(1), 173.185(e)(7), 173.301(f), 173.302a(a)(1).	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.2 and 2.3 liquefied and compressed gases and other hazardous materials for use in specialty cooling applications such as satellites and military aircraft.
21656–N	Rawhide Leasing Company LLC.	173.302a(b)	To authorize the requalification of 3A, 3AA, 3AX, 3AAx and 3T cylinders by proof pressure testing in accordance with CGA Pamphlet C–1 in lieu of hydrostatic or direct expansion testing.
21658–N	Veolia ES Technical Solutions LLC.	173.21(b), 173.51, 173.54(a), 173.56(b).	To authorize the one-time, one-way transportation in commerce of unapproved explosives for the purpose of disposal.
21663–N	Orbion Space Technology, Inc	172.203(a), 172.301(c), 173.301(f)(1), 173.302(a)(1).	To authorize the transportation in commerce of non-DOT specification cylinders containing xenon, compressed within the Aurora Propulsion System, which may be transported either on its own, within the modular container on file with the Office of Hazardous Materials Safety, or as part of a larger satellite (spacecraft).
21707–N	Stericycle, Inc	173.196(a)	To authorize the transportation in commerce of certain monkeypox contaminated medical waste for disposal.
Special Permits Data—Denied			
21568–N	SodaStream USA, Inc	180.209(a)	To authorize the transportation in commerce of carbon dioxide in DOT 3AL, TC/3ALM, and UN ISO 7866 specification cylinders that are not subject to the volumetric expansion test.
21599–M	Lanxess Corporation	178.274(b)(1)	To authorize the manufacture, mark, sale, and use of non-specification ''T20'' UN portable tanks conforming to all requirements of a UN portable tank.
21644–N	G-Shang Metal Corporation	180.209	To authorize the transportation in commerce of DOT 3AL cylinders that have been requalified every 10 years instead of every 5 years.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Withdrawn			
21698–N	Quantinuum LLC	173.159(b)(2)	To authorize the transportation in commerce of battery powered equipment to be intentionally activated during transportation.

[FR Doc. 2024–05032 Filed 3–8–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Investment Securities

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 comment on 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 the respondent is 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, ''Investment Securities.''

DATES: Comments must be received by May 10, 2024.

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: 1557–0205, 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) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0205'' 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'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0205'' or ''Investment Securities.'' 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, 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 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that 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 generally 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 OCC is publishing notice of the renewal of this collection.

Title: Investment Securities.

OMB Control No.: 1557–0205.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 [1] if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for ensuring that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk. Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period for securities held in satisfaction of debts previously contracted for up to an additional five years. In its request, the bank must provide a clearly convincing demonstration of why the additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate. The OCC also uses the information to evaluate the risks to the bank in extending the holding period, including potential effects on the bank's safety and soundness.

Estimated Burden:

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 25.

[1] 15 U.S.C. 80a–3(c)(1).

Estimated Total Annual Burden: 460 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2024–05104 Filed 3–8–24; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals and five entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these individuals and entities are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, 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 Compliance, 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://ofac.treasury.gov/*).

Notice of OFAC Action

On March 5, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individuals and entities are blocked under the relevant sanctions authorities listed below.

Individuals and Entities

1. DILIAN, Tal Jonathan (a.k.a. MENASHE, Tal Yonatan), 11B Route Des Arcys, Champery 1874, Switzerland; DOB 21 Aug 1961; POB Israel; nationality Israel; citizen Israel; alt. citizen Malta; Gender Male; Passport 22540627 (Israel); National ID No. 57053795 (Israel); alt. National ID No. 057053795 (Israel) (individual) [CYBER2].

Designated pursuant to section l(a)(ii) of Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

2. HAMOU, Sara Aleksandra Fayssal (a.k.a. HAMOU, Sara Aleksandra; a.k.a. HAMOU–HEMSI, Sara), 19 Psaron Agios Tychonas, Limassol 4521, Cyprus; DOB 27 Jun 1984; nationality Poland; Gender Female; Passport EK5529085 (Poland) (individual) [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

3. INTELLEXA S.A. (a.k.a. INTELLEXA ANONYMI ETAIREIA), Vouliagmenis Avenue & 14 Hatzievaggelou, Elliniko 16777, Greece; Leof Vouliagmenis 47, Elliniko 16777, Greece; Irodou Attikou Streeet 7, Athens, Greece; Karaoli Dimitriou 1 & Vasiliss 1, 15231, Athens, Greece; Organization Established Date 11 Mar 2020; Organization Type: Other information technology and computer service activities; Tax ID No. 801326153 (Greece); Chamber of Commerce Number 154460701000 (Greece) [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

4. INTELLEXA LIMITED (a.k.a. INTELLEXA LTD.), 3rd Floor Ulysses House, Foley Street, Dublin 1, Dublin D01W2T2, Ireland; Organization Established Date 30 Jan 2020; Organization Type: Other information technology and computer service activities; Company Number 665443 (Ireland) [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

5. CYTROX AD (a.k.a. SYTROX), October 20, no. 1/1–1, Karpos, Skopje, North Macedonia, The Republic of; Metropolitan Theodosij Gologanov 44, Karpos, Skopje, North Macedonia, The Republic of; Organization Established Date 2017; Organization Type: Other information technology and computer service activities [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

6. CYTROX HOLDINGS ZARTKORUEN MUKODO RESZVENYTARSASAG (a.k.a. CYTROX HOLDINGS ZRT.), Deak Ferenc Ter 3., Budapest 1052, Hungary; website *www.cytrox.com;* Organization Established Date 16 Jun 2017; Organization Type: Other information technology and computer service activities; V.A.T. Number 25986792241 (Hungary); Registration Number 0110049372 (Hungary) [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

7. THALESTRIS LIMITED, 3rd Floor Ulysses House, Foley Street, Dublin 1, Dublin D01 W2T2, Ireland; Organization Established Date 28 Nov 2019; Organization Type: Activities of holding companies; Tax ID No. 661545 (Ireland) [CYBER2].

Designated pursuant to section l(a)(ii) of E.O. 13694, as amended, for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii)(D) of E.O. 13694, as amended.

Dated: March 5, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–05045 Filed 3–8–24; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: USIP announces the next meeting of the Board of Directors.

DATES: Monday, March 11, 2024 (4–5:30 p.m. ET).

The next meeting of the Board of Directors will be held March 11, 2024.

ADDRESSES: 2301 Constitution Avenue NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Corinne Graff, 202–429–7895, *cgraff@usip.org.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: March 11, 2024.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2024–05048 Filed 3–8–24; 8:45 am]

BILLING CODE 2810–03–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 48 March 11, 2024

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301
Elective Payment of Applicable Credits; Elective Payment of Advanced Manufacturing Investment Credit; Final Rules
Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9988]

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Elective Payment of Applicable Credits; Elective Payment of Advanced Manufacturing Investment Credit; Final Rules; Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Proposed Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning the election under the Inflation Reduction Act of 2022 to treat the amount of certain tax credits as a payment of Federal income tax. The regulations describe rules for the elective payment of these credit amounts in a taxable year, including definitions and special rules applicable to partnerships and S corporations and regarding repayment of excessive payments. In addition, the regulations describe rules related to a required IRS pre-filing registration process. These regulations affect tax-exempt organizations, State and local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and, in the case of three of these credits, certain taxpayers eligible to elect the elective payment of credit amounts in a taxable year.

DATES:

Effective date: These regulations are effective May 10, 2024.

Applicability date: For dates of applicability, *see* §§ 1.6417–1(q), 1.6417–2(f), 1.6417–3(f), 1.6417–4(f), 1.6417–5(d), 1.6417–6(e), 301.6241–1(b)(1), and 301.6241–7(k)(3).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, Jeremy Milton at (202) 317–5665 and James Holmes at (202) 317–5114 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) to implement the statutory provisions of section 6417 of the Internal Revenue Code (Code), as enacted by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).

I. Overview of Section 6417

An applicable entity that meets all the requirements of section 6417 is permitted to make an election under section 6417 with respect to any applicable credit determined with respect to the applicable entity for the taxable year (elective payment election). If an applicable entity makes an elective payment election, the applicable entity is treated as making a payment against Federal income taxes imposed by subtitle A of the Code (subtitle A) for the taxable year with respect to which such credit was determined that is equal to the amount of such credit (elective payment amount). An election under section 6417 must be made at such time and in such manner as provided by the Secretary of the Treasury or her delegate (Secretary).

Section 6417(b) defines the term ''applicable credit'' to mean each of the following 12 credits:

(1) So much of the credit for alternative fuel vehicle refueling property allowed under section 30C of the Code that, pursuant to section 30C(d)(1), is treated as a credit listed in section 38(b) of the Code (section 30C credit);

(2) So much of the renewable electricity production credit determined under section 45(a) of the Code as is attributable to qualified facilities that are originally placed in service after December 31, 2022 (section 45 credit);

(3) So much of the credit for carbon oxide sequestration determined under section 45Q(a) of the Code as is attributable to carbon capture equipment that is originally placed in service after December 31, 2022 (section 45Q credit);

(4) The zero-emission nuclear power production credit determined under section 45U(a) of the Code (section 45U credit);

(5) So much of the credit for production of clean hydrogen determined under section 45V(a) of the Code as is attributable to qualified clean hydrogen production facilities that are originally placed in service after December 31, 2012 (section 45V credit);

(6) In the case of a ''tax-exempt entity'' described in section 168(h)(2)(A)(i), (ii), or (iv) of the Code, the credit for qualified commercial vehicles determined under section 45W of the Code by reason of section 45W(d)(3) [1] (section 45W credit);

(7) The credit for advanced manufacturing production under section 45X(a) of the Code (section 45X credit);

(8) The clean electricity production credit determined under section 45Y(a) of the Code (section 45Y credit);

(9) The clean fuel production credit determined under section 45Z(a) of the Code (section 45Z credit);

(10) The energy credit determined under section 48 of the Code (section 48 credit);

(11) The qualifying advanced energy project credit determined under section 48C of the Code (section 48C credit); and

(12) The clean electricity investment credit determined under section 48E of the Code (section 48E credit).

As described in part II of this Background, section 6417(d) defines an ''applicable entity'' and provides generally applicable rules for making elective payment elections. Section 6417(e) through (h) provide special rules applicable under section 6417 that are described in part II of this Background. As described in parts III and IV of this Background, section 6417(c), (d)(1)(B) through (D), and (d)(3) also contain special rules allowing a taxpayer, including for this purpose a partnership or S corporation, that is not an applicable entity (electing taxpayer) to elect to be treated as an applicable entity for the limited purpose of making an elective payment election under section 6417, but only with respect to section 45Q credits, section 45V credits, and section 45X credits. Part V of this Background describes Notice 2022–50, 2022–43 I.R.B. 325, which, in part, requested feedback from the public on potential issues with respect to the elective payment election provisions under section 6417. Part VI of this Background describes proposed regulations (REG–101607–23) and temporary regulations (TD 9975) issued under section 6417.

II. Applicable Entities and General Elective Payment Election Rules

Section 6417(d)(1)(A) defines the term ''applicable entity'' to mean:

(1) Any organization exempt from tax imposed by subtitle A;

(2) Any State or political subdivision thereof;

(3) The Tennessee Valley Authority;

[1] The reference was intended to be to section 45W(d)(2). See General Explanation of Tax Legislation Enacted in the 117th Congress, JCS–1–23 (December 21, 2023) at 282. Thus, the final regulations refer to section 45W(d)(2).

(4) An Indian tribal government (as defined in section 30D(g)(9) of the Code);

(5) Any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)); or

(6) Any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

Section 6417(d)(2) provides that, in the case of any applicable entity that makes the election described in section 6417(a), any applicable credit amount is determined (1) without regard to section 50(b)(3) and (4)(A)(i) of the Code (that is, restrictions on property used by tax-exempt organizations and governmental units), and (2) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

Section 6417(d)(3)(A)(i) provides rules regarding the due date for making any elective payment election. In the case of any government (such as a State, the District of Columbia, an Indian tribal government, any U.S. territory) or any political subdivision, agency or instrumentality of the foregoing described in section 6417(d)(1) and for which no return is required under section 6011 or 6033(a) of the Code, any election under section 6417(a) cannot be made later than the date as is determined appropriate by the Secretary. In any other case, any election under section 6417(a) cannot be made later than the due date (including extensions of time) for the tax return for the taxable year for which the election is made, but in no event earlier than 180 days after the date of the enactment of section 6417 (that is, in no event earlier than 180 days after August 16, 2022, which is February 13, 2023).

Section 6417(d)(3)(A)(ii) provides that any election under section 6417(a), once made, is irrevocable, and applies (except as otherwise provided in section 6417(d)(3)) with respect to any credit for the taxable year for which the election is made.

Section 6417(d)(3)(B) provides that, in the case of section 45 credits, any election under section 6417(a): (1) applies separately with respect to each qualified facility; (2) must be made for the taxable year in which such qualified facility is originally placed in service; and (3) applies to such taxable year and to any subsequent taxable year that is within the 10-year credit period described in section 45(a)(2)(A)(ii) with respect to such qualified facility.

Section 6417(d)(3)(C) provides that, in the case of section 45Q credits, any election under section 6417(a): (1) applies separately with respect to the carbon capture equipment originally placed in service by the applicable entity during a taxable year; and (2) applies to such taxable year and to any subsequent taxable year that is within the 12-year credit period described in section 45Q(a)(3)(A) or (4)(A) with respect to such equipment. Section 6417(d)(3)(C)(i)(II)(aa), (d)(3)(C)(ii), and (d)(3)(C)(iii) provides special rules for a taxpayer making the election to be treated as an applicable entity for purposes of section 6417 with respect to a section 45Q credit (*see* part III of this Background).

Section 6417(d)(3)(D) provides that, in the case of section 45V credits, any election under section 6417(a): (1) applies separately with respect to each qualified clean hydrogen production facility; (2) must be made for the taxable year in which such facility is placed in service (or within the 1-year period subsequent to the date of enactment of section 6417 in the case of facilities placed in service before December 31, 2022); and (3) applies to the taxable year and all subsequent taxable years with respect to such facility. Section 6417(d)(3)(D)(i)(III)(aa), (ii), and (iii) provide special rules for a taxpayer making the election to be treated as an applicable entity for purposes of section 6417 with respect to the 45V credit (*see* part III of this Background).

Section 6417(d)(3)(E) provides that, in the case of section 45Y credits, any election under section 6417(a): (1) applies separately with respect to each qualified facility; (2) must be made for the taxable year in which such facility is placed in service; and (3) applies to such taxable year and to any subsequent taxable year that is within the 10-year credit period described in section 45Y(b)(1)(B) with respect to such facility.

Section 6417(d)(4) provides rules regarding when the elective payment is treated as made. Section 6417(d)(4)(A) provides that, in the case of any government or political subdivision described in section 6417(d)(1), and for which no return is required under section 6011 or 6033(a), the payment described in section 6417(a) is treated as made on the later of the date that a return would be due under section 6033(a) if such government or subdivision were described in section 6033 or the date on which such government or subdivision submits a claim for credit or refund (at such time and in such manner as the Secretary provides). Section 6417(d)(4)(B) provides that, in any other case, the payment described in section 6417(a) is treated as made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed with the IRS.

Section 6417(d)(5) provides that, as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity under section 6417(a), the Secretary may require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6417.

Section 6417(d)(6) provides rules relating to excessive payments. In the case of any amount treated as a payment that is made by the applicable entity under section 6417(a), or the amount of the payment made pursuant to section 6417(c), that is determined to constitute an excessive payment, the tax imposed on such entity by chapter 1 of the Code (chapter 1), regardless of whether such entity would otherwise be subject to chapter 1 tax, for the taxable year in which such determination is made is increased by an amount equal to the sum of (1) the amount of such excessive payment, plus (2) an amount equal to 20 percent of such excessive payment. The increase equal to 20 percent of the excessive payment does not apply if the applicable entity can demonstrate that the excessive payment resulted from reasonable cause.

An excessive payment is defined as, with respect to a facility or property for which an election is made under section 6417 for any taxable year, an amount equal to the excess of (1) the amount treated as a payment that is made by the applicable entity under section 6417(a), or the amount of the payment made pursuant to section 6417(c), with respect to such facility or property for such taxable year, over (2) the amount of the credit that, without application of section 6417, would be otherwise allowable (as determined pursuant to section 6417(d)(2) and without regard to section 38(c)) with respect to such facility or property for such taxable year.

Section 6417(e) provides a denial of double benefit rule providing that, in the case of an applicable entity making an election under section 6417 with respect to an applicable credit, such credit is reduced to zero and, for any other purpose under the Code, is deemed to have been allowed to such entity for such taxable year.

Section 6417(f) provides a special rule relating to any territory [2] of the United States with a mirror code tax system (as defined in section 24(k) of the Code). Under this rule, section 6417 will not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of any such U.S. territory unless such U.S. territory elects to have section 6417 be so treated. Currently, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands have mirror code tax systems.

Section 6417(g) provides basis reduction and recapture rules. It states that, except as otherwise provided in section 6417(c)(2)(A),[3] rules similar to the rules of section 50 apply for purposes of section 6417.

Section 6417(h) authorizes the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

III. Special Rules Relating to Electing Taxpayers Making an Election Under Section 6417(d)(1)(B), (C), or (D)

A taxpayer other than an applicable entity under section 6417(d)(1)(A) (electing taxpayer) may make an election to be treated as an applicable entity for the limited purpose of making an elective payment election with respect to a section 45V credit, a section 45Q credit, or a section 45X credit under section 6417(d)(1)(B), (C), or (D), respectively. An electing taxpayer may make an elective payment election under section 6417(d)(1)(B), (C), or (D) at such time and in such manner as the Secretary provides (but no election may be made with respect to any taxable year beginning after December 31, 2032). The special rules for such an election are described in parts III.A, III.B, and III.C of this Background.

A. Electing Taxpayers Making an Election With Respect to Section 45V Credits

Section 6417(d)(1)(B) allows an electing taxpayer to make an elective payment election for any taxable year in which such taxpayer has placed in service a qualified clean hydrogen production facility (as defined in section 45V(c)(3)), but only with respect to a section 45V credit determined in such year with respect to the electing taxpayer. Pursuant to section 6417(d)(3)(D)(i)(III), such electing taxpayer is treated as having made such election for the taxable year with respect to which the election is made and each of the four subsequent taxable years ending before January 1, 2033. Under section 6417(d)(3)(D)(iii), an electing taxpayer may elect to revoke the application of such election, but any such election to revoke, if made, applies to the applicable year specified in such election (but not any prior taxable year) and each subsequent taxable year within the 5-year period and cannot be revoked.

Section 6417(d)(3)(D)(ii) prohibits an electing taxpayer from making a transfer election under section 6418(a) of the Code with respect to a section 45V credit for any year for which the electing taxpayer's election under section 6417(d)(1)(B) is in effect.

B. Electing Taxpayers Making an Election With Respect to Section 45Q Credits

Section 6417(d)(1)(C) allows an electing taxpayer to make an elective payment election for any taxable year in which the electing taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility (as defined in section 45Q(d)), but only with respect to a section 45Q credit determined in such year with respect to such taxpayer. Pursuant to section 6417(d)(3)(C)(i)(II)(aa), such electing taxpayer is treated as having made such election for the taxable year with respect to which the election is made and each of the four subsequent taxable years ending before January 1, 2033. Under section 6417(d)(3)(C)(iii), an electing taxpayer may elect to revoke the application of such election, but any such election to revoke, if made, applies to the applicable year specified in such election (but not any prior taxable year) and each subsequent taxable year within the 5-year period and cannot be revoked.

Section 6417(d)(3)(C)(ii) prohibits an electing taxpayer from making a transfer election under section 6418(a) with respect to a section 45Q credit for any year for which the electing taxpayer's election under section 6417(d)(1)(C) is in effect.

C. Electing Taxpayers Making an Election With Respect to Section 45X Credits

Section 6417(d)(1)(D) allows an electing taxpayer to make an elective payment election for any taxable year in which the electing taxpayer has, after December 31, 2022, produced eligible components (as defined in section 45X(c)(1)), but only with respect to a section 45X credit determined in such year with respect to such taxpayer. Pursuant to section 6417(d)(1)(D)(ii)(I), such electing taxpayer is treated as having made such election for the taxable year with respect to which the election is made and each of the four subsequent taxable years ending before January 1, 2033. Under section 6417(d)(1)(D)(ii)(II), an electing taxpayer may elect to revoke the application of such election, but any such election to revoke, if made, applies to the applicable year specified in such election (but not any prior taxable year) and each subsequent taxable year remaining within the 5-year period and cannot be revoked.

Section 6417(d)(1)(D)(iii) prohibits an electing taxpayer from making a transfer election under section 6418(a) with respect to a section 45X credit for any year for which the electing taxpayer's election under section 6417(d)(1)(D) is in effect.

IV. Section 6417 Rules for Partnerships and S Corporations

Section 6417(c) provides special rules for partnerships and S corporations that hold directly (as determined for Federal tax purposes) a facility or property for which an applicable credit is determined. Section 6417(c)(1) provides that, in the case of any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation, any elective payment election must be made by such partnership or S corporation in the manner provided by the Secretary. If a partnership or S corporation makes an elective payment election with respect to any applicable credit, (1) a payment is made to such partnership or S corporation equal to the applicable credit amount; (2) section 6417(e) is applied with respect to the applicable credit before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such applicable credit; (3) any applicable credit amount with respect to which the election in section 6417(a) is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code; and (4) a partner's distributive share of such tax exempt income is

[2] Section 6417(f) uses the term ''possession,'' but the proposed regulations and these final regulations use the alternative term ''territory.''

[3] There is no section 6417(c)(2)(A) and the Treasury Department and the IRS believe Congress intended to refer instead to section 6417(d)(2)(A). See General Explanation of Tax Legislation Enacted in the 117th Congress, JCS–1–23 (December 21, 2023) at 284. Thus, the proposed and final regulations refer to section 6417(d)(2)(A).

based on such partner's distributive share of the otherwise applicable credit for each taxable year (an S corporation shareholder's share of tax exempt income is based on the shareholder's pro rata share).

Section 6417(c)(2) provides that, in the case of any facility or property held directly by a partnership or S corporation, no election by any partner or shareholder is allowed under section 6417(a) with respect to any applicable credit determined with respect to such facility or property.

V. Notice 2022–50

On October 24, 2022, the Department of the Treasury (Treasury Department) and the IRS published Notice 2022–50, 2022–43 I.R.B. 325, to, among other things, request feedback from the public on potential issues with respect to the elective payment election provisions under section 6417 that may require guidance. Stakeholders submitted more than 200 comments in response to Notice 2022–50. Feedback in those comments informed the development of the proposed regulations and is described in the preamble to the proposed regulations as appropriate.

VI. Proposed and Temporary Regulations

On June 21, 2023, the Treasury Department and the IRS published proposed regulations under section 6417 (REG–101607–23) in the **Federal Register** (88 FR 40528) to provide guidance on elective payment elections (proposed regulations). Those proposed regulations included proposed § 1.6417–5, which contained proposed rules identical to the temporary regulations at § 1.6417–5T. Those temporary regulations also were published on June 21, 2023, in the **Federal Register** (88 FR 40093) to provide guidance on the mandatory information and registration requirements for elective payment elections. The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes the proposed regulations and all the substantive comments submitted in response to the proposed regulations. The Treasury Department and the IRS received 151 written comments in response to the proposed regulations. The comments are available for public inspection at *www.regulations.gov* or upon request. A hearing was conducted in person and telephonically on August 21, 2023, during which 10 presenters provided comments. After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications in response to the comments described in this Summary of Comments and Explanation of Revisions.

Comments merely summarizing the proposed regulations, recommending statutory revisions to section 6417 or other statutes, or addressing issues that are outside the scope of this rulemaking, such as the calculation of applicable credits (including any bonus credit amounts) or recommended changes to IRS forms, are beyond the scope of these regulations and are not adopted.

I. General Rules and Definitions

A. Applicable Entities

Section 6417(d)(1) defines applicable entity. Proposed § 1.6417–1(c) clarified the statutory definition of applicable entity pursuant to the Secretary's authority under section 6417(h) to issue regulations necessary to carry out the purposes of section 6417. Commenters addressed several aspects of the proposed definitions, as described in this Part I.A of the Summary of Comments and Explanation of Revisions.

1. Any Organization Exempt From the Tax Imposed by Subtitle A

Section 6417(d)(1)(A)(i) defines ''applicable entity'' as including any organization exempt from the tax imposed by subtitle A. The proposed regulations would have clarified that ''any organization exempt from the tax imposed by subtitle A'' meant (1) any organization exempt from the tax imposed by subtitle A by reason of section 501(a) of the Code and (2) any organization exempt from the tax imposed by subtitle A because it is the government of any U.S. territory or a political subdivision thereof.

A few commenters asked that Puerto Rico-registered nonprofits (those with Puerto Rico 1101.01 nonprofit status) be allowed to file for elective payment of renewable energy tax credits without having to acquire section 501(c)(3) status. As the preamble to the proposed regulations noted, stakeholders had previously responded to Notice 2022–50 by asking whether an entity classified as a nonprofit under State law but that does not have Federal tax-exempt status would be described in section 6417(d)(1)(A). The preamble to the proposed regulations stated that such an entity would not be described in section 6417(d)(1)(A) because it is not exempt from the tax imposed by subtitle A (but that some of these entities might meet the requirements of another type of applicable entity, such as a State instrumentality, and might be an applicable entity on those grounds). This same answer applies to a Puerto Rico-registered nonprofit that does not have section 501(c)(3) status.

Multiple commenters urged that homeowners' associations described in section 528 of the Code be considered applicable entities under section 6417(d)(1)(A) because they are ''exempt from the tax imposed by subtitle A'' by their statutory language. Two of these commenters noted that other sections within subchapter F of chapter 1 have similar statutory language, and one of these commenters thus requested that the final regulations be modified to include all organizations considered exempt from income taxes pursuant to subchapter F of chapter 1. In response, these final regulations adopt this comment and define ''any organization exempt from the tax imposed by subtitle A'' to include organizations exempt from the tax imposed by subtitle A by reason of subchapter F of chapter 1. Thus, under these final regulations, any organization described in sections 501 through 530 of the Code that meets the requirements to be recognized as exempt from tax under those sections is an applicable entity eligible to make an elective payment election.

No commenters opposed the inclusion of the government of any U.S. territory or a political subdivision thereof in this definition; thus, these final regulations adopt this definition as proposed. However, several commenters recommended that the final regulations provide an exception to the general rule in section 50(b)(1) for territorial applicable entities making elections under section 6417 for investment tax credits, advocating that such a rule would provide better parity with domestic applicable entities making such elections and would advance the IRA's purpose by improving access to clean energy investment tax credits in U.S. territories.

Since before the IRA, investment tax credits, vehicle-related credits, and energy efficiency incentives have included restrictions with respect to property located or used in U.S. territories by reference to section 50(b)(1). Section 50(b)(1) provides that ''no [investment tax] credit shall be determined . . . with respect to any property which is used predominantly outside the United States'' [4] unless

[4] Under section 7701(a)(9) of the Code, ''[t]he term 'United States' when used in a geographical

Continued

section 168(g)(4) applies (which provides an exception for any property that is owned by a domestic corporation or by a United States citizen other than a citizen entitled to the benefits of section 931 or 933 of the Code, and that is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States). The IRA did not amend these provisions; instead, the IRA specifically referenced 50(b)(1) in section 30C, incorporated section 50(b)(1) into section 45W, and did not exclude section 48, 48C, or 48E from the application of section 50(b)(1). Furthermore, section 6417(d)(2) provides special rules that enable tax-exempt and government entities to benefit from section 30C, 45W, 48, 48C, and 48E because it provides that applicable credits are determined without regard to sections 50(b)(3) and (4)(A)(i). However, there is no provision lifting the territory-related restrictions of section 50(b)(1). Without specific language in section 6417 or in the underlying applicable credits addressing section 50(b)(1), or other compelling evidence of congressional intent, a special rule turning off the application of section 50(b)(1) is not supported by the Code. Therefore, these final regulations do not adopt this recommendation.

One commenter asked for a process under which the Puerto Rico Department of Treasury (or any other agency designed by the Governor of Puerto Rico) is designated to receive, process, and/or administer elections for elective payments from applicable entities and instrumentalities of Puerto Rico, similar to the process for disbursements of Coronavirus Relief Funds under the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (March 27, 2020). The Treasury Department and the IRS have determined that creating the suggested process is inappropriate for elective payment elections because section 6417 involves the filing of a tax return with the IRS. Accordingly, these final regulations do not adopt this comment.

2. Any State or Political Subdivision Thereof

Section 6417(d)(1)(A)(ii) defines ''applicable entity'' to include any State or political subdivision thereof. The proposed regulations would have clarified that this includes the District of Columbia. No comments addressed this definition, so these final regulations adopt the definition as proposed.

3. Indian Tribal Governments

Section 6417(d)(1)(A)(iv) states that an applicable entity includes an Indian tribal government (as defined in section 30D(g)(9)). To provide Indian tribal governments parity with State governments, proposed § 1.6417–1(c)(3) would have included subdivisions of Indian tribal governments in this definition. Proposed § 1.6417–1(k) defined the term Indian tribal government as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the most recent list published by the Department of the Interior in the **Federal Register** pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). Although no comments were received that directly addressed the definition of an Indian tribal government provided in proposed § 1.6417–1(c)(3), these final regulations clarify the proposed definition by specifying that the most recent list published by the Department of the Interior in the **Federal Register** is the one prior to the date on which a relevant elective payment election is made. (Comments regarding Tribal entities other than Indian tribal governments are discussed elsewhere in this Summary of Comments and Explanation of Revisions.)

4. Alaska Native Corporations

Section 6417(d)(1)(A)(v) provides that any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) (ANC) is an applicable entity. The proposed regulations would have adopted this definition. The proposed regulations requested comments regarding the definition in proposed § 1.6417–1(c)(4) and whether additional guidance is necessary regarding consolidated groups with ANC common parents. The Treasury Department and the IRS did not receive comments related to this definition, but these final regulations adopt the proposed regulation and broaden it to apply to consolidated groups with any applicable entity as a common parent, as described in part I.B.5. of this Summary of Comments and Explanation of Revisions.

5. Rural Electric Cooperatives

Section 6417(d)(1)(A)(vi) provides that any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas is an applicable entity. The proposed regulations did not elaborate on this definition but requested comments on whether further clarification of the definition in proposed § 1.6417–1(c)(6) is necessary.

A few commenters addressed this definition. Some of these commenters stated that ''clarity would be better achieved'' if the Treasury Department and the IRS would refer to tax-exempt electric cooperatives as applicable entities described in 501(c)(12) and taxable electric cooperatives as applicable entities described in section 1381(a)(2)(C) of the Code. One of these commenters stated that an electric cooperative may be described in section 45(e)(2)(A)(iii) as a not-for-profit electric utility that had or has received a loan or loan guarantee under the Rural Electrification Act of 1936. Another commenter asked that the final regulations also allow a ''pre-1962'' rural electric cooperative under section 1381(a)(2)(C) to be eligible to make an elective payment election. Another commenter asked that the final regulations clarify that rural electric cooperatives that file either Form 1120, *U.S. Corporation Income Tax Return,* or Form 990, *Return of Organization Exempt from Income Tax,* be eligible to make an elective payment election.

The Treasury Department and the IRS have concluded that rural electric cooperatives as described in section 6417(d)(1)(A)(vi) include rural electric cooperatives that do not meet the requirements under section 501(c)(12), as cooperatives that meet the requirements under section 501(c)(12) are already considered tax-exempt entities in section 6417(d)(1)(A)(i). To avoid rendering section 6417(d)(1)(A)(vi) superfluous, it is necessary to include taxable (nonexempt) rural electric cooperatives in section 6417(d)(1)(A)(vi). Taxable (nonexempt) rural electric cooperatives are described in section 1381(a)(2)(C) as ''any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.'' Thus, these final regulations under § 1.6417–1(c)(6) clarify that section 6417(d)(1)(A)(vi) means ''any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas as described in section 1381(a)(2)(C) of the Code.'' These final regulations do not include ''any electric cooperative described in section 45(e)(2)(A)(iii)'' in the definition because such section does not exist in the Code, and the Treasury Department

sense includes only the States and the District of Columbia.''

and the IRS are unsure what cooperatives the commenter is referencing.

One commenter recommended that the final regulations clarify that local, publicly owned utilities (for example, water and electric) and electric cooperatives (other than rural) are eligible entities under section 6417(d)(1)(A)(vi), stating that the proposed definition aligns with Congressional intent and that there are more than 2,800 public owned utilities and cooperatives in operation combined serving millions of customers across the United States. Because section 6417(d)(1)(A)(vi) requires that a cooperative be engaged in furnishing electric energy to persons ''in rural areas,'' these final regulations do not include these entities in the definition of rural electric cooperative. However, it is possible that publicly owned utilities and non-profit co-ops could qualify as applicable entities under other definitions described in these rules, such as if they are considered agencies or instrumentalities of a State, local, territorial, or Tribal government.

Multiple commenters asked that the final regulations expand rural electric cooperatives to cover workers cooperatives that install solar panels. These commenters also requested clarification as to how to determine an organization is (1) operating on a cooperative basis; (2) furnishing electricity; and (3) furnishing electricity in a rural area. The commenters generally suggest adopting existing rules under subchapter T of chapter 1 of the Code (subchapter T).

These final regulations do not adopt a specific rule covering workers cooperatives that install solar panels because the revision to the definition of rural electric cooperatives in the final regulations is sufficient to clarify the meaning of the term. As these final regulations include any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas as described in section 1381(a)(2)(C), it is the law that applies to those corporations that will apply in making the determination with respect to any respective corporation.

With respect to operating on a cooperative basis, a summary of the taxation of nonexempt rural electric cooperatives may be helpful in explaining the key principles. The rules for tax treatment of most nonexempt cooperatives and their patrons were codified with the enactment of subchapter T as part of the Revenue Act of 1962. Public Law 87–834 (H.R. 10650). However, section 1381(a)(2)(C) states that subchapter T is not applicable to an organization engaged in furnishing electric energy (or providing telephone service) to persons in rural areas. According to the Senate Finance Committee Report accompanying the 1962 Act, the intent of Congress was that nonexempt rural electric cooperatives would continue to be treated as under ''present law'' as of 1962. While subchapter T does not expressly control the taxation of nonexempt rural electric cooperatives, its foundations rest upon pre-1962 cooperative tax law. As a result, there are certain basic parallels between the tax treatment of nonexempt utility (electric and telephone) cooperatives and treatment of other cooperative organizations under subchapter T. Therefore, to extent that subchapter T reflects cooperative taxation as it existed prior to 1962, it is instructive in resolving certain issues facing rural electric cooperatives. This is because Congress stated that, in enacting subchapter T, it was merely codifying the long common law history of cooperative taxation (with the exception of ensuring at least one annual level of tax at the cooperative or patron level. *See* S. Rep. No. 1881, 87th Cong., 1st Sess. 113 (1962)). Arguably, the case law post-enactment is merely a continuation and refinement of the pre-enactment common law.

Perhaps the most succinct definition of the term ''cooperative'' for Federal income tax purposes was provided by the U.S. Tax Court in *Puget Sound Plywood, Inc.* v. *Commissioner,* 44 T.C. 305 (1965), *acq.* 1966–1 C.B. 3:

> Under the cooperative association form or organization . . . , the worker-members of the association supply their own capital at their own risk; select their own management and supply their own direction for the enterprise, through worker meetings conducted on a democratic basis; and then themselves receive the fruits of their cooperative endeavors, through allocations of the same among themselves as coworkers, in proportion to the amounts of their active participation in the cooperative undertaking.

The Tax Court went on to describe three guiding principles at the core of economic cooperative theory as, *id.* at 308:

> (1) Subordination of capital, both as regards control over the cooperative undertaking, and as regards the ownership of the pecuniary benefits arising therefrom; (2) democratic control by the worker-members themselves; and, (3) the vesting in and allocation among the worker-members of all fruits and increases arising from their cooperative endeavor (*i.e.,* the excess of operating revenues over the costs incurred in generating those revenues), in proportion to the worker-members active participation in the cooperative endeavor.

The mechanism by which rural electric cooperatives achieve operation at cost is the patronage dividend (or capital credit). The payment of patronage dividends (and operation at cost) is critical to achieving cooperative status as defined by *Puget Sound,* so any organization must analyze this issue to determine whether it is operating on a cooperative basis.

The comments related to the definition of ''furnishing'' electricity for purposes of section 6417(d)(1)(A)(vi) varied. For example, some commenters suggested using the language in § 1.1381–1(b)(4) as the standard, and some suggested the term should not be limited to generating and transmitting electricity. One commenter suggested that a percentage of rural nameplate capacity be applied for purposes of the definition of ''furnishing'' electricity, while another commenter stated that a more than de minimis standard should be used to meet furnishing requirements. Consistent with the determination that section 6417(d)(1)(A)(vi) will cover rural electric cooperatives described in section 1381(a)(2)(C), the Treasury Department and the IRS conclude that ''furnishing'' electricity under section 6417(d)(1)(A)(vi) should be interpreted in the same manner as the language in § 1.1381–1(b)(4), which provides ''[a]ny organization which is engaged in generating, transmitting, or otherwise furnishing electric energy.'' The purpose of this language in § 1.1381–1(b)(4) is to identify rural electric cooperatives described in section 1381(a)(2)(C). Using a similar interpretation for purposes of section 6417 means that a cooperative furnishing electric energy under § 1.1381–1(b)(4) would meet this portion of the definition. Such a cooperative would not be subject to subchapter T as a result of section 1381(a)(2)(C), assuming the electricity is provided to rural areas.

With respect to this conclusion, the Treasury Department and the IRS note that some of the commenters identified themselves as cooperatives subject to the provisions of subchapter T. The definition of applicable entity in section 6417(d)(1)(A)(vi) would not include a cooperative that is subject to subchapter T, as a cooperative cannot be both subject to subchapter T and excepted from subchapter T. Further, the definition of furnishing in § 1.1381–1(b)(4), and thus for purposes of section 6417, does not include the activity of installation of energy equipment (such as the installation of solar panels), as that alone is not the generation or other furnishing of electricity. Thus, organizations evaluating whether their

operations include furnishing electricity for purposes of section 6417 should take this into account.

Consistent with including rural electric cooperatives described in section 1381(a)(2)(C) and the use of § 1.1381–1(b)(4) to determine whether a cooperative is ''furnishing'' electricity, the Treasury Department and the IRS reach a similar conclusion with respect to defining ''rural'' for purposes of section 6417 by reference to § 1.1381–1(b)(4). Section 1.1381–1(b)(4) provides that the term rural area has the meaning assigned to [it] in section 5 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 924). Currently 7 U.S.C. 924(b) provides that the term 'rural area' is deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

6. Tennessee Valley Authority

Section 6417(d)(1)(A)(iii) states that the Tennessee Valley Authority is an applicable entity. The proposed regulations would have adopted this definition. No commenters addressed this definition, so these final regulations adopt the definition as proposed.

7. An Agency or Instrumentality of Certain Applicable Entities

Proposed § 1.6417–1(c)(7) would have clarified that an agency or instrumentality of (1) any U.S. territory or a political subdivision thereof; (2) any State, the District of Columbia, or political subdivision thereof; or (3) an Indian tribal government or a subdivision thereof is also an applicable entity eligible to make an elective payment election. The proposed regulations requested comments on this approach to defining applicable entities and on whether further guidance is necessary. Commenters addressed both the scope of the definition and whether it should be expanded to include Federal agencies and instrumentalities.

i. Scope of the Definition of ''Agency'' and ''Instrumentality''

Several commenters asked for additional clarity on the definition of agencies and instrumentalities, such as whether joint powers authorities, housing authorities, transit authorities, air authorities, publicly owned utilities, or tax-exempt entities in the water sector are included (and one commenter requested a similar clarification pertaining to political subdivisions). Various commenters mentioned application of Rev. Rul. 57–128, 1957–1 C.B. 311, while two of these commenters asked how the facts and circumstances analysis in the revenue ruling would apply to their specific facts. One commenter requested a rule stating that whether an entity is an agency or an instrumentality is determined based on (or at least influenced by) State or local law. Finally, one commenter asked that the final regulations allow tribes to determine what is an agency or instrumentality of an Indian tribal government.

The determination of whether an entity is an agency, instrumentality, or a political subdivision (or subdivision in the case of an Indian tribal government) is governed by Federal tax law that is outside the scope of these final regulations. Federal tax determinations of whether an entity is an agency or instrumentality of any government typically are analyzed on a facts and circumstances basis. In determining whether an entity is an agency or instrumentality for Federal tax purposes, Federal courts have applied a test similar to the six-factor test in Rev. Rul. 57–128, which generally provides guidance on whether an entity is an instrumentality for purposes of the exemption from employment taxes under sections 3121(b)(7) and 3306(c)(7). *See, e.g., Bernini* v. *Federal Reserve Bank of St. Louis, Eighth District,* 420 F. Supp. 2d 1021 (E.D. Mo. 2005) and *Rose* v. *Long Island Railroad Pension Plan,* 828 F.2d 910, 918 (2d Cir. 1987), *cert. denied,* 485 U.S. 936 (1988).

Rev. Rul. 57–128 looks to the following six factors:

(1) Whether the organization is used for a governmental purpose and performs a governmental function;

(2) Whether performance of the organization's function is on behalf of one or more States or political subdivisions;

(3) Whether there are any private interests involved, or whether the States or political subdivisions involved have the powers and interests of an owner;

(4) Whether control and supervision of the organization is vested in public authority or authorities;

(5) If express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and

(6) The degree of financial autonomy and the source of its operating expenses.

The Treasury Department and the IRS are unaware of any different Federal tax authority or standard that applies to determine whether an entity qualifies as an instrumentality of an Indian tribal government for Federal tax purposes. The application of the facts-and-circumstances analysis in Rev. Rul. 57–128 to any particular entity is outside the scope of this rulemaking.

With respect to political subdivisions, Rev. Rul. 78–276, 1978–2 C.B. 256, states that the term ''political subdivision'' has been defined consistently for all Federal tax purposes as denoting either (1) a division of a State or local government that is a municipal corporation, or (2) a division of such State or local government that has been delegated the right to exercise sovereign power by the State or local government. The three generally acknowledged sovereign powers are the power to tax, the power of eminent domain, and the police power. *See Commissioner* v. *Estate of Shamberg,* 3 T.C. 131 (1944), *acq.,* 1945 C.B. 6, *aff'd* 144 F.2d 998 (2d Cir. 1944), cert denied, 323 U.S. 792 (1945). It is not necessary that all three sovereign powers enumerated in *Shamberg* be delegated. *See* Rev. Rul. 77–164, 1977–1 C.B. 20. However, possession of only an insubstantial amount of any or all sovereign powers is not sufficient.

In determining whether an entity is a division of a State or local governmental unit, important considerations are the extent that the entity is (1) controlled by the State or local government unit, and (2) motivated by a wholly public purpose. *See., e.g.,* Rev. Rul. 78–276, 1978–2 C.B. 256 and Rev. Rul. 83–131, 1983–2 C.B. 184.

Determination of agency, instrumentality, or political subdivision (or subdivision in the case of an Indian tribal government) status is based on all the facts and circumstances, and additional guidance on this subject is beyond the scope of these final regulations. Generally, however, taxpayers may request a private letter ruling from the IRS Office of Chief Counsel to apply applicable law to the organization's specific set of facts. *See* Rev. Proc. 2024–1, I.R.B. 2024–1 (containing procedures for letter rulings) and Rev. Proc. 2024–3, I.R.B. 2024–1 (containing a list of areas of the Code relating to matters on which the IRS will not issue letter rulings).

One commenter asked that an instrumentality be eligible to make an elective payment election with respect to its assets that are operated and maintained by a private partner under a public-private partnership. While it is not clear what kind of entity the commenter means by ''public-private partnership,'' if the arrangement is treated as a partnership for Federal tax purposes, then the partnership would not be an applicable entity listed in section 6417(d)(1)(A). *See* part I.B.4 of this Summary of Comments and Explanation of Revisions.

ii. Federal Agencies and Instrumentalities

Several commenters asked that the final regulations include Federal agencies and instrumentalities within the definition of applicable entity. Commenters specifically mentioned the United States Postal Service, Federal hydropower agencies, Federal Power Marketing Administrations (PMAs), the Army Corps of Engineers, and the Bureau of Reclamation.

One commenter stated that the proposed regulations did not provide a justification for why Federal agencies or instrumentalities were not included. This commenter did, however, note that, absent statutory authorization to the contrary, agency-collected user fees and charges already must be deposited in the Treasury General Fund. Several commenters suggested that the cross-reference in section 6417(b)(6)—the provision setting out the list of applicable credits—to section 168(h)(2)(A)(i) should be read to provide Federal agencies and instrumentalities with the ability to make an elective payment election for at least section 45W credits. Similarly, one commenter asked that PMAs be able to apply, file, and receive all elective payments under section 6417 on behalf of the power generating agencies of regional Federal power programs. This commenter stated that PMAs serve as the Federal entities responsible for facilitating the funding of and ensuring repayment for the regional power program, both expensed annual maintenance and capital improvements, and that it would be beneficial to eliminate unnecessary overlap, confusion, and administrative burdens to efficiently use elective payments for applicable projects. Section 6417(a)(1), however, authorizes an election of an applicable credit only by an applicable entity under section 6417(d)(1)(A). Although the Treasury Department and the IRS solicited comments on the issue, no commenter addressed how appropriations issues raised by including Federal agencies and instrumentalities (beyond the Tennessee Valley Authority, which is specifically listed in the statute) or PMAs within the definition of applicable entities could or should be resolved. The Treasury Department and the IRS have thus retained the proposed approach and have not extended the definition of applicable entities to those additional entities in these final regulations.

8. Electing Taxpayers

Certain taxpayers that are not listed in section 6417(d)(1)(A) or described in the preceding paragraphs may nevertheless make an election to be treated as an applicable entity with respect to applicable credit property giving rise to a section 45Q credit, section 45V credit, or section 45X credit, as described more fully in part III of this Summary of Comments and Explanation of Revisions. Proposed § 1.6417–1(g) would have defined an ''electing taxpayer'' as any taxpayer that is not an applicable entity, but makes an election in accordance with proposed §§ 1.6417–2(b), 1.6417–3, and, if applicable, 1.6417–4, to be treated as an applicable entity for a taxable year with respect to applicable credits determined with respect to an applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7). No commenters addressed this definition; thus, these final regulations adopt the definition as proposed.

B. Entities Related to an Applicable Entity or an Electing Taxpayer

Proposed § 1.6417–2(a) would have provided rules for elective payment elections made by entities related to applicable entities or electing taxpayers. Commenters addressed several of these proposed rules.

1. Disregarded Entities

Proposed § 1.6417–1(f) defined ''disregarded entity'' as an entity that is disregarded as an entity separate from its owner for Federal income tax purposes. Proposed § 1.6417–2(a)(1)(ii) would have provided that, if an applicable entity or electing taxpayer is the owner (directly or indirectly) of a disregarded entity that directly holds an applicable credit property, the applicable entity may make an elective payment election for applicable credits determined with respect to the applicable credit property held directly by the disregarded entity.

Several commenters asked that the final regulations clarify whether Tribal corporations formed under section 17 of the Indian Reorganization Act of 1934 are considered applicable entities. In response, these final regulations clarify the definition of disregarded entity under § 1.6417–1(f), consistent with the current rule in § 301.7701–1(a)(3), to expressly state that the term includes a Tribal corporation incorporated under section 17 of the Indian Reorganization Act of 1934, as amended (25 U.S.C. 5124), or under section 3 of the Oklahoma Indian Welfare Act, as amended (25 U.S.C. 5203), that is not recognized as an entity separate from the tribe for Federal tax purposes, and therefore is disregarded as an entity separate from its owner for purposes of section 6417.

One commenter asked that the final regulations treat an applicable entity that is the sole shareholder of an S corporation as eligible to make an elective payment election for all applicable credits determined with respect to applicable property held by the S corporation, in the same manner as an applicable entity that is the owner of a disregarded entity would be eligible to make an elective payment election for all applicable credits determined with respect to applicable credit property held by the disregarded entity. Another commenter asked that any entity wholly owned by an applicable entity be treated as an applicable entity. This commenter anticipated that many applicable entities will want to create special purpose entities to own their tax credit eligible projects, but that the classification of such entities as an applicable entity can be uncertain. As an example, the commenter suggested that a city that would normally issue bonds through an industrial development authority that is treated as an agency or instrumentality of the city may want the industrial development authority to create a wholly-owned corporation or limited liability company to be the owner of the project. The commenter stated that it may be difficult to determine whether such wholly-owned entity of an industrial development authority would also be treated as an agency or instrumentality since it is based on a facts and circumstances analysis. Moreover, under § 301.7701–2(b)(6), the commenter pointed out that a limited liability company that is wholly owned by an agency or instrumentality of a State or local governmental unit may be treated as a separate corporation and, therefore, may not be treated as a disregarded entity. In sum, the commenter stated that it saw no policy reason why an entity wholly owned by an applicable entity should not be treated as an applicable entity.

The Treasury Department and the IRS have determined that special rules disregarding an entity's Federal tax status for purposes of section 6417(d)(1)(A) are not appropriate. Section 6417(d)(1)(A) is specific as to the types of entities afforded applicable entity status. Any regarded entity that has a Federal tax status separate from its owner(s) and is not separately listed in section 6417(d)(1)(A) cannot be treated as an applicable entity. This is consistent with the rule for taxable C corporations discussed in part I.B.2 of this Summary of Comments and Explanation of Revisions.

2. Taxable C Corporations

The proposed regulations would have provided that, because a taxable C corporation is an entity separate from its owner, proposed § 1.6417–1(c)(1) would not include a C corporation that is not itself an applicable entity described in proposed § 1.6417–1(c)(1) as an applicable entity, even if its owner is an applicable entity described in proposed § 1.6417–1(c)(1). However, an electing taxpayer may include a taxable C corporation (including a member of a consolidated group). These final regulations adopt § 1.6417–1(c)(1) as proposed.

3. Undivided Ownership Interests

Proposed § 1.6417–2(a)(1)(iii) would have provided that, if an applicable entity is a co-owner in an applicable credit property through an arrangement properly treated as a tenancy-in-common (TIC) for Federal income tax purposes, or through an organization that has made a valid election under section 761(a) of the Code to be excluded from the application of subchapter K of chapter 1 (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an elective payment election for the applicable credits determined with respect to such applicable credit property. Commenters addressed TICs, valid section 761(a) elections, and joint ownership under section 48E.

i. Tenancies in Common and Organizations That Have Made a Valid Election Under Section 761(a)

Several commenters asked for additional guidance and examples illustrating how an applicable entity's undivided ownership share of applicable credit property is determined in the context of renewable energy projects such as wind and solar projects, clean hydrogen projects, and electric vehicle infrastructure. These comments are beyond the scope of these final regulations. The ownership share of a party to a transaction will be determined based upon the agreement of the parties and other relevant facts and circumstances.

Several commenters stated that the mechanisms for co-ownership allowed under the proposed regulations are in common practice today and would allow applicable entities to join with other entities in developing applicable credit properties without precluding elective payment election choices by project participants. However, other commenters stated that TICs and joint operating agreements (JOAs) that have validly elected out of subchapter K are not commonly used in the renewable energy marketplace (even by private entities) and can deprive participants of limited liability. These commenters stated that these arrangements may be less familiar to applicable entities as compared to traditional partnership structures used between public and private entities for the development of clean energy projects. Commenters also opined that applicable entities may not be sufficiently resourced to navigate these newer commercial law relationships and would be disadvantaged compared to non-applicable entities, who can avail themselves of partnership structures in the form of limited partnerships or limited liability companies, which provide most members with limited liability for State law purposes.

Commenters asked for clear guidance and clarifications as to how a renewable energy project could meet the requirements for electing out of subchapter K. For example, one commenter asked how § 1.761–2(a) could be applicable in the context of a jointly operated renewable energy project. Section 1.761–2(a) provides, in relevant part, that an unincorporated organization the members of which are able to compute their income without the necessity of computing partnership taxable income, and that is not an organization classifiable as an association, may be excluded from the application of subchapter K if the organization is availed of (1) for investment purposes only and not for the active conduct of a business, or (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. Specifically, the commenter stated that it is unclear how parties jointly operating a renewable energy project can do so without conducting a business selling services or property produced (that is, selling electricity).[5]

Another commenter asked for clarity on what a delegation of authority under § 1.761–2(a)(3)(iii) would cover for a JOA of applicable credit property that produces electricity. Section 1.761–2(a)(3)(iii) provides, in relevant part, that a participant to a JOA may delegate authority to sell its share of any property produced or extracted, but not for a period in excess of the minimum needs of the industry, and in no event for more than one year. This commenter also asked for examples of compliant JOAs that would allow electricity generated through the joint ownership of applicable credit property to be sold pursuant to a power purchase agreement.

Commenters also requested guidance permitting a single entity or taxpayer to handle the administrative affairs and day-to-day management activities of operating an applicable credit property on behalf of the other joint owners without impacting the owners' ability to be properly excluded from the application of subchapter K. One commenter stated that it would be useful to illustrate a range of JOAs likely to result in exclusion from the application of subchapter K and suggested that key elements of such fact patterns might include: an agreement to share revenues in proportion with the co-owners' respective ownership interests; an agreement to share revenues out of proportion with the co-owners' respective ownership interests; an agreement in which rights to dispose of property or take other significant actions are reserved to a subset of the co-owners; and/or an agreement to receive debt financing based on the anticipation of funds expected to result from an elective payment election in a case in which the lender is not a co-owner.

A commenter stated that it would also be helpful to clarify the application of § 1.761–2(a)(3)(iii) to co-ownership ventures in cases in which co-owners generate and sell power as a collective rather than on their separate accounts, or alternatively if the collective entity sells power to each of the participating co-owners and then those co-owners sell power to third parties on their own accounts but the collective may sell some other services or property incidental to the activity for which the credit is determined. This commenter highlighted that, in California and some other States, local government agencies often pool resources under a Joint Powers Authority (JPA). The commenter asked that guidance clarify the conditions under which a JPA could be treated as an organization that has made a valid election under section 761(a) of the Code to be excluded from the application of subchapter K, including if the JPA is a separate legal entity and sells power under its own account.

[5] The commenter also raised Rev. Proc. 2002–22, 2002–1 CB 733 (specifying the conditions under which the IRS will consider a request for a private letter ruling that an undivided fractional interest in rental real property is not an interest in a business entity), and noted that: ''if the parties to a joint venture combine capital or services with the intent of conducting a business or enterprise and of sharing the profits and losses from the venture, a partnership (or other business entity) is created.''

One commenter stated that existing guidance allowing for clean energy arrangements to validly elect out of subchapter K, including through the use of TIC structures, is limited and should be updated. This commenter stated that a partnership is defined in the Code and in the Treasury Regulations under sections 761 and 7701, but the distinction between an arrangement treated as a partnership for Federal tax purposes and one that has validly elected out of subchapter K, including a valid TIC, is not well defined in the energy generation context. The commenter pointed out that pre-IRA partnership guidance, including guidance allowing for the use of tax-equity partnership structures, is widely used as a basis for structuring projects within the renewable industry and is well understood. However, existing guidance for arrangements in the energy generation context that will not be treated as a partnership for Federal tax purposes is limited and outdated. The commenter urged the Treasury Department and the IRS to provide clear, updated, and timely guidance on clean energy arrangements that would not be treated as partnerships for Federal tax purposes.

The Treasury Department and the IRS agree that additional guidance is needed on joint ownership arrangements of applicable credit property that produce electricity that can be excluded from the application of subchapter K. As a result, the Treasury Department and the IRS have proposed regulations in the Proposed Rules section of this edition of the **Federal Register** that would add certain exceptions to the requirements contained in the regulations under section 761(a) and provide an example. These exceptions generally would allow any applicable entity described in section 6417(d)(1)(A) and § 1.6417–1(c) that jointly owns applicable credit property that produces electricity to (1) own its interests through an entity (other than an entity required to be treated as a corporation under the Code) and (2) delegate its authority to an agent to sell its share of the electricity produced from such applicable credit property for a period of more than 1 year, provided that the delegation authority to the agent is not for more than 1 year. *See Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from the Application of Subchapter K,* REG–101552–24, in the Proposed Rules section of this edition of the **Federal Register**.

ii. Applying the Undivided Ownership Interests Rule to Qualified Property

One commenter requested some clarifying edits to address how proposed § 1.6417–2(a)(1)(iii), the rule for undivided ownership interests, would operate with respect to a section 48E credit. This commenter noted that proposed § 1.6417–1(e)(12) defines ''applicable credit property'' for purposes of section 48E as ''a qualified facility described in section 48E(b)(3);'' however, section 48E(b) allows a section 48E credit to be claimed only with respect to a qualified investment in a qualified facility. The commenter asked for clarification on what part of the qualified investment is owned by such joint tenant, and suggested adding language to the final regulations to clarify that an applicable entity should be able to claim applicable credits with respect to the applicable credit property in proportion to its share of qualified property.

The Treasury Department and the IRS agree with the commenter that a section 48E credit is determined, in part, based on an applicable entity's qualified investment with respect to a qualified facility, but do not believe that further language is needed because this concept is already covered in the language under proposed § 1.6417–2(a)(1)(iii), which provides that an applicable entity will be treated as owning a separate applicable credit property equal to its undivided ownership share. An applicable entity's undivided ownership share is determined under Federal income tax ownership principles and is outside the scope of these final regulations. Thus, these final regulations do not adopt the commenter's suggestion.

4. Partnerships

The proposed regulations would have provided that partnerships and S corporations are not applicable entities described in section 6417(d)(1)(A), but requested comments on whether any entity described in section 6417(d)(1)(A)(i) through (vi) or proposed § 1.6417–1(c) could include an entity organized as a partnership or S corporation for Federal tax purposes. No commenter stated that an entity described in section 6417(d)(1)(A)(i) through (vi) or proposed § 1.6417–1(c) could include an entity organized as a partnership or S corporation for Federal tax purposes. Therefore, these final regulations adopt the rule as proposed.

Under the proposed regulations and these final regulations, a partnership or an S corporation is eligible to make the elective payment election only with respect to a section 45V credit, section 45Q credit, and section 45X credit (assuming all the other requirements to make the election with respect to these credits are met). This rule applies no matter how many of the partners or shareholders are applicable entities described in section 6417(d)(1)(A) and § 1.6417–1(c), including if all of the partners or shareholders are applicable entities described in section 6417(d)(1)(A) and § 1.6417–1(c). However, as the proposed regulations noted, because section 6418(f)(2) defines ''eligible taxpayer'' for purposes of transfer eligibility as ''any taxpayer which is not described in section 6417(d)(1)(A)'' (and thus not in proposed § 1.6417–1(c)), such a partnership or S corporation would be an eligible taxpayer described in section 6418(f)(2) and may be eligible to transfer eligible credits.[6]

A number of commenters requested that the final regulations allow applicable entities to make elective payment elections through an entity treated as a partnership for Federal tax purposes, either if all the partners in the partnership are applicable entities described in section 6417(d)(1)(A) or if at least one partner in the partnership is an applicable entity described in section 6417(d)(1)(A). Commenters advocating for including partnerships composed entirely of applicable entities as an applicable entity stated that such a rule would help cover capital needs, diversify risk, and fill gaps in expertise between applicable entities. Commenters advocating for mixed partnerships (that is, partnerships consisting of both applicable entities and entities that are not applicable entities) said that not allowing applicable entities to make elective payment elections for applicable credit property held through mixed partnerships would reduce economic incentives to invest in clean energy, undermining the objectives of the IRA. Several commenters stated that applicable entities lack the required resources to engage in green energy projects themselves and asked that the final regulations permit a partnership to make an elective payment election with respect to the portion of the underlying credits allocable to an applicable entity.

[6] The Treasury Department and the IRS acknowledge that section 6418 does not contain a provision parallel to section 6417(d)(2) providing that section 50(b)(3) and (4)(A)(i) do not apply to limit the determination of a credit in section 6417. Thus, section 50(b)(3) and (4)(A)(i) may limit eligible investment tax credits determined with respect to a partnership or S corporation with applicable entity partners or shareholders for purposes of section 6418.

A few commenters stated that structures eligible to elect out of subchapter K have numerous requirements and complexities that limit their usefulness. One commenter recommended that the final regulations either (1) allow a partnership to make an elective payment election on one hundred percent of the credits so long as the partnership is majority owned by an applicable entity, or (2) allow a partnership with majority applicable entity ownership to make an elective payment election on the portion of credits allocable to such applicable entities.

Based on the language in section 6417(c)(1) that treats a partnership as the owner of any applicable credit property held directly by the partnership and requires a partnership to make any elective payment election with respect to such property, these final regulations retain the proposed regulations' entity view of partnerships under section 6417(c)(1). Because an entity described in section 6417(d)(1)(A)(i) through (vi) or proposed § 1.6417–1(c) does not include an entity treated as a partnership for Federal tax purposes (or as an S corporation), these final regulations do not adopt commenters' suggestions and do not allow entities treated as partnerships for Federal tax purposes (or S corporations) to make elective payment elections, except with respect to a section 45V credit, section 45Q credit, and section 45X credit. However, these restrictions do not apply to entities, whether comprised of only applicable entities or comprised of a mix of applicable and non-applicable entities, that have made a valid election out of subchapter K under section 761(a), including through the exception for certain joint ownership arrangements of applicable credit property identified in the proposed regulations under section 761 described in part I.B.3.i of this Summary of Comments and Explanation of Revisions.

A few commenters asked that taxable entities be permitted to serve as an administrative member or manager of a State law entity to which an applicable entity owns all of the other interests without creating a partnership for Federal tax purposes, provided that such taxable entities do not receive distributive shares of partnership items or partnership distributions. These final regulations do not attempt to establish any additional criteria by which a taxpayer can provide administrative or managerial services for an applicable entity without creating a partnership between the taxpayers for Federal tax purposes. However, as previously described, the Treasury Department and the IRS are simultaneously issuing proposed regulations under section 761 in the Proposed Rules section of this edition of the **Federal Register** that provide additional guidance for certain renewable energy arrangements that can validly elect out of subchapter K.

Multiple commenters asked that the final regulations provide further clarity on Tribal entities and allow co-ownership of projects. A few commenters asked that the final regulations allow Tribal Energy Development Organizations (TEDOs), or other wholly owned Tribal enterprises, to be applicable entities regardless of how they are chartered. Some commenters asked that the final regulations allow tribes to form special purpose vehicles under an LLC structure to jointly own renewable energy projects and employ the distributive share rules for allocating the ''applicable credit'' to each LLC member, regardless of the tax status of that member. Commenters also asked that inter-governmental partnerships, whether formed under State law such as JPAs, or formed under Tribal law as inter-tribal consortiums, should be eligible to make an elective payment election.

While it is possible that in certain cases a Tribal law entity (including a TEDO) and/or inter-governmental partnership could be an applicable entity, such a determination is outside the scope of these final regulations. However, the Treasury Department and the IRS are actively working on guidance regarding the Federal tax status of Tribal law entities organized and controlled by tribes. The Treasury Department and the IRS will not release final guidance in advance of additional Tribal consultation.

Commenters also stated that, if the Treasury Department and the IRS allow for section 6417 elections to be made on behalf of applicable entity partners, the final regulations should make conforming clarifications, including clarifying that the ''applicable credit'' that is reduced to zero under section 6417(e) is only the portion of the credit for which a section 6417 election has been made and clarifying the distributive share rules. Because these final regulations do not allow section 6417 elections to be made on behalf of applicable entity partners, these final regulations do not adopt the suggested conforming changes.

5. Consolidated Groups

Proposed § 1.6417–2(a)(1)(v) would have provided that, for members of a consolidated group (as defined in § 1.1502–1) the common parent of which is an Alaska Native Corporation, any member that is an electing taxpayer may make an elective payment election with respect to applicable credits determined with respect to the member. Proposed § 1.6417–2(a)(2)(vi) would have provided the same rule with respect to electing taxpayers. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members). The proposed regulations would also have provided that a member of a consolidated group is required to complete pre-filing registration as a condition of, and prior to, making an elective payment election.

The preamble to the proposed regulations stated that an ANC may be the common parent of a consolidated group of corporations (ANC-parented group) and noted that some stakeholders had inquired whether non-ANC members of an ANC-parented group may separately make an elective payment election with respect to a section 45V credit, section 45Q credit, or section 45X credit determined with respect to such member. In response, the preamble to the proposed regulations stated that a non-ANC member of an ANC-parented group may qualify as an electing taxpayer eligible to make elections under section 6417(d)(1)(B), (C), or (D), based on its own corporate status. *See* § 1.1502–80(a). As with any other electing taxpayer, a non-ANC member of an ANC-parented group would be required to complete pre-filing registration (as would be required under proposed § 1.6417–5) and must make its elective payment election under section 6417(d)(1)(B), (C), or (D) with respect to an applicable section 45V credit, section 45Q credit, or section 45X credit determined with respect to the member. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

The preamble to the proposed regulations requested comments (1) regarding the definition in proposed § 1.6417–1(c)(4) and whether additional guidance is necessary regarding consolidated groups with ANC common parents; (2) whether additional guidance is necessary to address any uncertainty that may exist regarding the application of section 6417 in the context of a consolidated group with members that are cooperatives subject to the rules of subchapter T of chapter 1; and (3) regarding the application of section 6417 to consolidated groups with electing taxpayers (for example, whether special rules are necessary for consolidated groups to apply the

''denial of double benefit'' rule under proposed § 1.6417–2(e)(2)).

No commenter addressed these issues relating to ANCs. However, the Treasury Department and the IRS have determined that the text of proposed § 1.6417–2(a)(1)(v), which referred to consolidated groups ''of which an Alaska Native Corporation is the common parent,'' was too limiting and should apply to any consolidated group with an applicable entity parent. Therefore, these final regulations expand the definition by removing the specific reference to Alaska Native Corporations in § 1.6417–2(a)(1)(v) and broaden the rule to apply to any consolidated group of which an applicable entity is the common parent.

A few commenters requested confirmation that the ''entity-specific'' rules of section 6417 apply to an elective payment election made by a partnership that has as its only partners two or more members of the same consolidated group and suggested an example confirming the treatment. The commenters wanted confirmation that the election would be made by the partnership, as required by section 6417(c)(1) and proposed § 1.6417–4(a), rather than by the partnership's members, as provided in proposed § 1.6417–2(a)(2)(vi). The Treasury Department and the IRS agree that any entity treated as a partnership for Federal tax purposes, and not any of its partners (regardless of the identity or Federal tax status of the partners), would make an elective payment election with respect to section 45Q credits, section 45V credits, or section 45X credits pursuant to section 6417(c)(1) and § 1.6417–4(a), but disagree that an example illustrating this point is needed.

6. Pooled Investment Vehicles

The proposed regulations did not provide a special rule for employee plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) if they choose to invest through pooled investment vehicles, whether the vehicles are organized as partnerships or otherwise. One commenter stated that ERISA plans typically make investments through pooled investment vehicles, which often are organized as limited partnerships or LLCs, and take minority interests in them in order to avoid subjecting the vehicles to fiduciary, prohibited transaction, and other rules under ERISA's ''plan asset'' rules. The commenter believed that, if pooled investment vehicles are not considered to be applicable entities, then employee plans generally cannot benefit from elective payment elections under section 6417 with respect to some or all of the applicable credits listed in section 6417(b). The commenter suggested that ERISA plan fiduciaries might choose not to invest in applicable credit activities at all. The commenter requested that the final regulations provide a mechanism by which ERISA plan investors indirectly investing through pooled investment vehicles can make an elective payment election.

The Treasury Department and the IRS understand the commenter's concern that ERISA plans may be discouraged from investing in certain entities engaged in applicable credit activities under the proposed regulations. Other applicable entities have similar concerns that investments in certain entities engaged in applicable credit activities under the proposed regulations will not be investments in applicable entities. While there are rules outside of these final regulations that may impact how ERISA plans make investments, there is no indication in section 6417 that ERISA plans can or should be subject to rules different than those that apply to other applicable entities. Thus, these final regulations do not provide a special rule for ERISA plans investing in pooled investment vehicles that would allow ERISA plans to be eligible to make an elective payment election if investing through a partnership structure.

II. Rules for Making Elective Payment Elections

A. In General

Proposed § 1.6417–2 would have provided general rules for an applicable entity or electing taxpayer to make an elective payment election under section 6417 with respect to any applicable credit determined with respect to such entity. Commenters addressed many aspects of these proposed rules, which are discussed in this part II of the Summary of Comments and Explanation of Revisions. These final regulations adopt the rules as proposed, with the modifications described in this part II.

B. Manner of Making the Election

Section 6417(a) provides that the elective payment election is made ''at such time and in such manner as the Secretary may provide,'' and proposed § 1.6417–2(b) would have provided the particular requirements for properly and timely making the election.

1. Return Requirements

Proposed § 1.6417–2(b)(1)(i) would have provided that an applicable entity makes an elective payment election on the applicable entity's or electing taxpayer's annual tax return, as defined in proposed § 1.6417–1(b), in the manner prescribed by the IRS in guidance, along with any required completed source credit form(s) with respect to the applicable credit property, a completed Form 3800, *General Business Credit* (or its successor), and any additional information, including supporting calculations, required in instructions to the relevant forms.

To avoid any confusion about how the elective payment election should be made, proposed § 1.6417–1(b) would have defined ''annual tax return,'' for purposes of the section 6417 regulations, as follows: (1) for any taxpayer normally required to file an annual tax return with the IRS, such annual return (including the Form 1065, *U.S. Return of Partnership Income,* for partnerships and the Form 990–T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)),* for organizations with unrelated business income tax or a proxy tax under section 6033(e)); (2) for any taxpayer that is not normally required to file an annual tax return with the IRS (such as taxpayers located in the U.S. territories), the return they would be required to file if they were located in the United States, or, if no such return is required (such as for a State; the District of Columbia; or local or Indian tribal governments), the Form 990–T; and (3) for taxpayers filing a return for a taxable year of less than 12 months (short year), the short year tax return. These final regulations make minor, nonsubstantive edits to the definition in the proposed regulations to avoid using the phrase annual tax return in defining the term.

Several commenters requested that the IRS use a new or different form than Form 990–T or revise certain forms (including Forms 990, 990–T, 1120, 3468, 3800, 8038–CP, and 8911). Several commenters also requested a detailed list of the documents required to complete the filing process, information on how to complete required forms, or reduced information requirements for filers who had previously not been required to file any returns with the IRS.

The Treasury Department and the IRS recognize that some taxpayers may not have experience or a historical filing obligation and will consider providing simplified instructions or the need for a new form in future years. The Treasury Department and IRS are committed to developing educational and outreach tools to assist tribes, government entities, their instrumentalities, and exempt organizations to complete the forms required solely to make an elective payment election. It is outside

of the scope of these final regulations to address comments related to individual forms or the kind of documentation that may be required to complete those forms. Thus, these final regulations adopt the rules as proposed.

Several commenters requested confirmation that, for those taxpayers that normally file the Form 1120 with the IRS, the Form 1120 can be used to make the elective payment election. The Treasury Department and the IRS confirm that this is the intent of the language in § 1.6417–1(b)(1), which states ''[f]or any taxpayer normally required to file an annual tax return with the IRS, such annual return,'' and have added the Form 1120, as well as other examples of annual tax forms, to the parenthetical.

Other commenters requested that the elective payment election could be made on the Form 1120–W. As the Form 1120–W is not an annual income tax return, these final regulations do not adopt that suggestion.

2. Original Return Requirements

Proposed § 1.6417–2(b)(1)(ii) would have provided that an elective payment election must be made on an original return (including any revisions on a superseding return) filed not later than the due date (including extensions of time) for the original return for the taxable year for which the applicable credit is determined. The proposed regulations stated that no elective payment election may be made ''or revised'' on an amended return or by filing an administrative adjustment request (AAR) under section 6227 of the Code. The proposed regulations also did not provide for relief under § 301.9100–1 through 301.9100–3 (9100 relief) for an elective payment election that is not timely filed.

Multiple commenters asked that an elective payment election be permitted on an amended return or AAR and/or that a taxpayer be permitted an extension of time under the 9100 relief procedures to make a late election. Commenters stated that not allowing a late election is an unreasonable result for new market entrants and creates significant barriers for entities with limited resources. Some commenters recommended that applicable entities should be allowed to make the elective payment election on late returns and also be able to claim a six-month automatic extension of time to file the election under § 301.9100–2(b). Commenters requested that the final regulations provide some form of relief for taxpayers that acted in good faith and made a reasonable effort in complying, particularly for new filers who may not have had a prior filing obligation. Commenters further suggested that providing additional time to make an election would increase market participation and promote equity.

In response to these comments, these final regulations remove the words ''or revised'' in § 1.6417–2(b)(1)(ii) and provide ''[n]o elective payment election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227, although a numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary.'' This clarification is intended to address situations in which a taxpayer intended to make an elective payment election but made a reporting error with respect to an element of a valid election (for example, miscalculating the amount of the credit on the original return or making a typographical error in the process of inputting a registration number), and to allow the taxpayer to correct any errors that would result in a disallowance of the election or to correct an excessive payment before an excessive payment determination is made by the IRS. Consistently, it is appropriate to allow taxpayers to correct errors that would result in a larger payment than indicated on the original return as long as such larger amount is accurate. This provision cannot be used to revoke an election or to make an election for the first time on an amended return. In addition, the taxpayer's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. To properly correct an error on an amended return or AAR, a taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; a taxpayer cannot correct a blank item or an item that is described as being ''available upon request.''

These final regulations also modify the proposed regulations to permit an extension of time under § 301.9100–2(b) to allow for an automatic six-month extension of time from the due date of the return (excluding extensions) to make the election prescribed in section 6417(d)(3), which provides relief for applicable entities or electing taxpayers who have a filing obligation and file by the due date of the return. The elective payment election is a statutory election because its due date is prescribed by statute. As such, the section 9100 relief procedures apply only insofar as the late election is being filed pursuant to § 301.9100–2(b), which requires that the taxpayer timely filed its return for the year the election should have been made. Relief under this provision applies only to taxpayers that have not received an extension of time to file a return after the original due date. Taxpayers eligible for this relief must take corrective action under § 301.9100–2(c) within the six-month extension period and follow the procedural requirements of § 301.9100–2(d).

A few commenters requested clarification on superseding returns. One commenter stated that the proposed regulations appeared ambiguous regarding whether a return filed after the original due date, but within the automatic extension period, is considered a superseding return. This commenter recommended clarifying that this would be considered a superseding return.

Neither the Code nor regulations define a superseding return, but administrative IRS guidance provides that a superseding return is a return filed subsequent to the originally-filed return but before the due date for filing the return (including extensions). For example, if an applicable entity subject to an automatic 6-month extension files an original return on the due date (excluding extensions) and then files a subsequent return within the automatic extension period, the subsequent return would generally be considered a superseding return. Unlike a superseding return, an amended return is a return filed after the taxpayer filed an original return and after the due date for filing the return (including extensions).

One commenter stated that the reference to a superseding return seems to be an acknowledgment that some taxpayers will use a provisional tax return filed on the due date (before extensions) to hasten the election process. This commenter asked whether, if a taxpayer files a provisional return on March 15, 2024, and files a superseding return on September 15, 2024, the taxpayer would be treated as making payment against tax under section 6417(d)(4) on March 15, 2024. The Treasury Department and the IRS note that the designation ''provisional'' return has no basis in the Code or regulations and accordingly, such returns are not treated differently by the IRS upon filing. Taxpayers are reminded that a tax return is signed under penalties of perjury that the return is true, correct, and complete. If an

original return is filed on March 15, 2024, and contains a valid elective payment election, the taxpayer is treated as making a payment against tax on that day. A superseding return could increase or reduce the amount of the net elective payment election. If the amount is increased, the additional elective payment is treated as paid on the date the superseding return was filed. Taxpayers should be aware that filing a superseding return could result in a delay in processing the additional elective payment amount. If the net elective payment amount is reduced because of the superseding return, the taxpayer could be subject to interest and, if the taxpayer fails to pay the difference with the superseding return, penalties.

3. Pre-Filing Registration Requirements

Proposed § 1.6417–2(b)(2) would have specified that pre-filing registration (as is required under § 1.6417–5T and would be required under proposed § 1.6417–5) is a condition of any amount being treated as a payment that is made by an applicable entity under section 6417(a). The proposed regulations stated that an elective payment election will not be effective with respect to applicable credits determined with respect to an applicable credit property unless the applicable entity or electing taxpayer receives a valid registration number for the applicable credit property and provides the registration number for each applicable credit property on its Form 3800 (or its successor) attached to the tax return, in accordance with guidance. These final regulations clarify in § 1.6417–2(b)(2) that a valid registration number must also be included on any required completed source credit form(s) with respect to the applicable credit property. Additional information about the pre-filing registration process is described in part V of this Summary of Comments and Explanation of Revisions.

4. Due Date Requirements

Section 6417(d)(3)(A)(i) provides that any election under section 6417(a) must be made not later than (1) in the case of any government, or political subdivision, described in section 6417(d)(1) and for which no return is required under section 6011 or 6033(a), such date as is determined appropriate by the Secretary, or (2) in any other case, the due date (including extensions of time) for the return of tax for the taxable year for which the election is made, but in no event earlier than 180 days after the date of the enactment of section 6417 (February 13, 2023). Section 6417 is applicable to taxable years beginning after December 31, 2022.

Proposed § 1.6417–2(b)(3) would have implemented this provision as follows. In the case of any taxpayer for which no income tax return is required under section 6011 or 6033(a) of the Code (such as a governmental entity), the elective payment election must be made no later than the due date (including an extension of time) for the original return that would be due under section 6033(a) if such applicable entity were described in that section. Under section 6072(e) of the Code, that date is the 15th day of the fifth month after the taxable year determined by section 441 of the Code. Subject to the issuance of guidance that specifies the manner in which an entity for which no Federal income tax return is required under section 6011 or 6033(a) of the Code could request an extension of time to file, the proposed regulations would have provided that an automatic paperless six-month extension from the original due date is deemed to be allowed.

In the case of any taxpayer that is not normally required to file an annual tax return with the IRS (such as those located in the U.S. territories), the proposed regulations would have provided that the elective payment election must be made no later than the due date (including extensions of time) that would apply if the taxpayer was located in the United States (such as the 15th day of the fourth month after the end of the year for individuals filing Form 1040 or for corporations filing Form 1120). For example, an individual in a U.S. territory would be required to make the elective payment election on or before the 15th day of April following the close of the calendar year, or, if the individual filed an extension, on or before the 15th day of October following the close of the calendar year.

The proposed regulations would have provided that, in any other case, the elective payment election must be made no later than the due date (including extensions of time) for the original return for the taxable year for which the election is made, but in no event earlier than February 13, 2023.

Commenters did not address the second or third provisions, and they are adopted without change. However, with respect to the first provision, these final regulations simplify the provision in proposed § 1.6417–2(b)(3), which stated that an elective payment elective must be made no later than, ''[i]n the case of any taxpayer for which no Federal income tax return is required under section 6011 or 6033(a) of the Code, the due date (including an extension of time) for the original return that would be due under section 6033(a) if such applicable entity were described in that section. Under section 6072(e), that date is the 15th day of the fifth month after the taxable year determined by section 441 of the Code,'' to simply provide that an elective payment election must be made no later than, ''[i]n the case of any taxpayer for which no Federal income tax return is required under sections 6011 or no Federal return is required under 6033(a) of the Code [ ], the 15th day of the fifth month after the taxable year.''

Commenters asked that the final regulations clarify the determination of taxable year for an entity that does not have a filing requirement under section 6011 or 6033(a), stating that the reference to ''the taxable year determined by section 441 of the Code'' is confusing and that the Code provides latitude to taxpayers in determining their applicable taxable year (including calendar year, fiscal year, and short years as applicable). Commenters gave the example of an applicable entity that is filing Form 990–T for the sole reason of making an elective payment election for an applicable credit. If the applicable entity uses a fiscal year beginning July 1 and ending June 30, placed in service a project for which an applicable credit was determined during the first six months of 2023, and used its fiscal year for purposes of establishing a taxable year, then the applicable entity would be ineligible to make an elective payment election for such project because the fiscal year during which the project was placed in service began on July 1, 2022, which is a fiscal year beginning before December 31, 2022. Commenters noted that similarly situated taxpayers who file their returns on a calendar year basis would be eligible to make an elective payment election. Commenters requested that they be allowed to choose a calendar taxable year for purposes of making an elective payment election, or, alternatively, that they be permitted to file using a short year beginning January 1, 2023, and ending on the date of their next fiscal year.

These final regulations delete the reference to section 441 and clarify that, for purposes of section 6417, an applicable entity that is not required to file a Federal income tax return pursuant to section 6011 or Federal return pursuant to section 6033(a) (such as a State; the District of Columbia; an Indian tribal government; any U.S. territory; a political subdivision of a State, the District of Columbia, or a U.S. territory, or a subdivision of an Indian tribal government; certain agencies or instrumentalities of a State, the District

of Columbia, an Indian tribal government, or a U.S. territory; or a taxpayer excluded from filing pursuant to section 6033(a)(3)), but is filing solely to make an elective payment election, may choose whether to file its first Form 990–T (and thus adopt a taxable year for purposes of section 6417) based upon a calendar or fiscal year, provided that such entity maintains adequate book and records, including a reconciliation of any difference between its regular books of account and its chosen taxable year, to support making an elective payment election on the basis of its chosen taxable year. This should allow an applicable entity that is not required to file a Federal income tax return pursuant to section 6011 or Federal return pursuant to section 6033, but has placed in service an applicable credit property in 2023, to file Form 990–T based on a calendar year and make an elective payment election with respect to the applicable credit property regardless of when the property was placed in service during 2023.

These final regulations continue to provide, consistent with the proposed regulations, that, subject to issuance of guidance that specifies the manner in which an entity for which no Federal income tax return is required under section 6011 or no Federal return is required under section 6033(a) could request an extension of time to file and make the elective payment election, an automatic paperless six-month extension from the 15th day of the fifth month after the taxable year is deemed to be allowed.

The Treasury Department and the IRS note that a taxpayer that has filed a Federal income tax return under section 6011 or a Federal return under section 6033(a) with the IRS must continue to use that taxable year unless the taxpayer requests a change of annual accounting period pursuant to section 442 of the Code.

5. Irrevocability Requirement

Proposed § 1.6417–2(b)(4) would have provided that any election under section 6417(a), once made, is irrevocable and applies with respect to any applicable credit for the taxable year for which the election is made.

Under section 6417, the election period applies for a period of years with respect to certain applicable credits. Specifically, for a section 45 credit or section 45Y credit, the election applies to the 10-year period beginning on the date the facility was originally placed in service. For a section 45Q credit, the election applies to the 12-year period beginning on the date the equipment was originally placed in service. For a section 45V credit, the election applies to all subsequent taxable years with respect to the facility.

Electing taxpayers make the election for one five-year period per applicable credit property, but are allowed one revocation per applicable credit property, as provided in section 6417(d)(1)(D), (d)(3)(C), and (d)(3)(D), and would have been provided in proposed § 1.6417–3 (as described in part III of this Explanation of Provisions).

No commenters addressed the irrevocability rule, and these final regulations adopt the rule without change.

6. No Partial Elections

Proposed § 1.6417–2(b)(5) would have provided that an elective payment election applies to the entire amount of applicable credit(s) determined with respect to each applicable credit property that was properly registered for the taxable year, resulting in an elective payment amount that is the entire amount of applicable credit(s) determined with respect to the applicable entity or electing taxpayer for a taxable year. As a result, the proposed regulations would require that an applicable entity make an elective payment election for the entire amount of the credit determined with respect to each applicable credit property.

A few commenters advocated for allowing partial elections, stating that this flexibility would be helpful. The Treasury Department and the IRS note that the statute and the proposed regulations already provide considerable flexibility because taxpayers can register none, some, or all of their applicable credit properties. Further, as opposed to section 6418(a), which allows an eligible taxpayer to elect to transfer all (or any portion specified in the election) of an eligible credit, section 6417(a) provides that an applicable entity making an election is treated as making a payment against the income tax ''equal to the amount of'' the applicable credit, which does not provide the flexibility to make an election equal to a portion of the applicable credit. Thus, these final regulations adopt the proposed regulations without change.

C. Determination of Applicable Credit

Proposed § 1.6417–2(c) would have provided three rules relating to the determination of any applicable credit: (1) special rules for tax-exempt organizations and government entities; (2) a special rule for investment-related credit property acquired with income that is exempt from taxation under subtitle A; and (3) a rule that credits must be determined with respect to the applicable entity or electing taxpayer.

1. Special Rules for Tax-Exempt Organizations and Government Entities

In accordance with section 6417(d)(2), proposed § 1.6417–2(c)(1) would have provided that, in the case of any applicable entity that makes the election described in section 6417(a), any applicable credit is determined (1) without regard to the restrictions regarding use of property by tax-exempt organizations and government entities found in sections 50(b)(3) and (4)(A)(i); and (2) by treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

Proposed § 1.6417–2(c)(2) would have elaborated on the effect of the ''trade or business'' rule in section 6417(d)(2) and proposed § 1.6417–2(c)(1)(ii). Proposed § 1.6417–2(c)(2)(i) would have allowed tax-exempt and government entities to take advantage of applicable credits even outside of the unrelated business taxable income context (provided other requirements are met) by allowing the entity to treat an item of property as if it is of a character subject to an allowance of depreciation (such as under sections 30C and 45W); to produce items ''in the ordinary course of a trade or business of the taxpayer'' (such as in sections 45V and 45X); and to state that an item of property is one for which depreciation (or amortization in lieu of depreciation) is allowable (such as in sections 48, 48C, and 48E). No commenter addressed this rule, but these final regulations made nonsubstantive edits to this proposed version.

Proposed § 1.6417–2(c)(2)(ii) would have allowed the entity to apply the capitalization and accelerated depreciation rules (such as sections 167, 168, 263 and 263A of the Code) that apply to determining the basis and the depreciation allowance for property used in a trade or business. One commenter asked whether applicable entities can use section 266 of the Code to capitalize carrying charges. In response, these final regulations add section 266 to the list of capitalization and accelerated depreciation rules that applicable entities can use in § 1.6417–2(c)(2)(ii).

Proposed § 1.6417–2(c)(2)(iii) would have made limitations on the use of credits generally applicable to persons engaged in the conduct of a trade or business applicable to the making of an elective payment election under section 6417, such as the at-risk rules of section 49 of the Code in the context of

investment credits determined under sections 48, 48C, and 48E, and the passive activity rules under section 469 of the Code that apply to all applicable credits. For section 49 to apply to investment tax credits for which an elective payment election is made, the property must be placed in service by an applicable entity or electing taxpayer described in section 465(a)(1) of the Code (for example, an individual or a C corporation with respect to which the stock ownership requirements of section 542(a)(2) of the Code are met). For section 469 to apply to applicable credits for which an elective payment election is made, the applicable entity or electing taxpayer would need to be described in section 469(a)(2) (that is, an individual, estate or trust, a closely held C corporation, or a personal service corporation). Thus, for any applicable entity or electing taxpayer for which section 49 or 469 generally applies, those limitations apply with respect to the determination of applicable credits for purposes under section 6417.

The proposed regulations requested comments on whether any additional clarification is needed regarding the application of sections 49 and 469 to applicable entities or electing taxpayers determining the amount of an applicable credit. Two commenters asked that the final regulations clarify that section 49 does not apply to limit credits available to tribes or Tribal entities that use direct loan or Federal loan guarantee programs. The Treasury Department and the IRS note that section 49 generally applies only to individuals and C corporations meeting the stock ownership requirements of section 542(a)(2), and that section 49 reduces the credit base only by the amount of nonqualified nonrecourse financing, as defined in section 49(a)(1)(D)(ii). Both of these determinations are dependent on the facts and circumstances and are outside of the scope of these final regulations.

Proposed § 1.6417–2(c)(2)(iv) would have stated that the trade or business rule does not create any presumption that the trade or business is related (or unrelated) to a tax-exempt entity's exempt purpose. One commenter asked whether nonprofits will owe tax on Solar Renewable Energy Credits (SREC) sales and how selling the SRECs upfront versus selling them over time might change the result. This comment is outside the scope of these final regulations. Another commenter asked that the final regulations provide that income from applicable credit property does not give rise to unrelated business income tax (UBIT). Whether income from applicable credit property gives rise to UBIT is a fact-intensive inquiry under sections 511 through 514 of the Code and it is outside the scope of these final regulations. As these comments do not require revisions to the proposed rule, these final regulations adopt the § 1.6417–2(c)(2)(iv) as proposed.

In addition, these final regulations clarify that the trade or business rule subjects the applicable entity to the credit limitation that applies when there is an excess benefit, as described in part II.C.2 of this Summary of Comments and Explanation of Revisions. *See* § 1.6417–2(c)(2)(v) and (c)(3)(ii).

2. Special Rule for Investment-Related Credit Property Acquired With Amounts, Including Income From Certain Grants and Forgivable Loans, That Are Exempt From Taxation Under Subtitle A

Proposed § 1.6417–2(c)(3) would have provided a special rule for investment credit property acquired with amounts, including income from certain grants and forgivable loans, that are exempt from taxation under subtitle A (tax exempt amounts) and would have expanded the rule to ''investment-related tax credits'' (that is, to other credits that are determined as a percentage of a property's basis).

The special rule stated that, for purposes of section 6417, any tax exempt amounts used to purchase, construct, reconstruct, erect, or otherwise acquire an applicable credit property described in sections 30C, 45W, 48, 48C, or 48E (investment-related credit property) are included in basis for purposes of computing the applicable credit amount determined with respect to the investment-related credit property, regardless of whether basis is required to be reduced (in whole or in part) by such amounts under general tax principles. Without this rule, applicable entities that use tax exempt amounts to purchase, construct, reconstruct, erect, or otherwise acquire investment-related credit property may not be able to take full advantage of investment-related tax credits with respect to such property because general tax principles may require applicable entities to reduce the basis in such property, for general business credit purposes, by the amount paid for with tax exempt amounts.

This special rule, by not reducing basis for tax-exempt amounts for purposes of computing the applicable credit amount, conferred excess tax benefits under general tax principles applicable to taxable entities. The proposed regulations contained a ''no excess benefit'' rule in proposed § 1.6417–2(c)(3) to give effect to the requirement in section 6417(d)(2)(B) that the investment-related credit property be treated as used in a trade or business of an applicable entity (and thus subject to general tax principles that apply to taxable entities). The proposed no excess benefit rule would have reduced the applicable credit amount with respect to ''restricted tax exempt amounts,'' which taxable entities are generally not entitled to include in the basis of corresponding investment-related credit property under general tax principles, if the sum of such restricted tax-exempt amounts plus the applicable credit exceeded the cost of the applicable credit property. Specifically, proposed § 1.6417–2(c)(3) would have provided that, if an applicable entity receives tax exempt amounts for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property (restricted tax exempt amount), and any restricted tax exempt amounts plus the applicable credit otherwise determined with respect to that investment-related credit property exceeds the cost of the investment-related credit property, then the amount of the applicable credit is reduced so that the total amount of applicable credit plus the amount of any restricted tax exempt amounts equals the cost of investment-related credit property. This no excess benefit rule was a subset of the special rule for investment credit property acquired with tax exempt amounts in that it applied only to restricted tax exempt amounts; in other words, it only applied to tax exempt amounts that are conditioned on being used for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment credit property and did not apply to other tax exempt amounts. Proposed § 1.6417–2(c)(5) contained three examples illustrating these rules.

One commenter strongly supported the special rule for investment-related credit property acquired with income that is exempt from taxation as reasonable and necessary, stating that it (1) places applicable entities on similar footing as taxable entities with respect to impacts on basis, (2) makes funding count equally for investment tax credits (that are determined as a percentage of basis) and production tax credits (which are not tied to basis), and (3) is consistent with the purposes in section 6417. Several other commenters expressed appreciation for this ''stackability'' feature of the proposed regulations.

However, some commenters did not support the no excess benefit part of the rule, stating that section 6417 does not contain any limitation on determining the amount of an elective payment for an applicable credit if the applicable entity has received grants or forgivable loans not subject to Federal income tax. These commenters opined that not only does section 6417 not authorize promulgation of such a rule, but the proposed rule is inconsistent with the intent of section 6417, which, in the commenters' view, is generally to permit applicable entities to receive an elective payment of an applicable credit in an amount otherwise allowable under the Code.

These final regulations generally adopt the proposed special rule for investment-related credit property acquired with amounts, including income from certain grants and forgivable loans, that are exempt from taxation, with modifications discussed in this Part II.C.2 of the Summary of Comments and Explanation of Provisions section. First, these final regulations seek to clarify that the no excess benefit rule is a subset of the general rule by separating the special rule into two parts: (1) an ''amounts included in basis'' rule (allowing tax exempt amounts to count toward basis) and (2) a ''no excess benefit from restricted tax exempt amounts'' rule (not allowing restricted tax exempt amounts plus the amount of the credit to exceed the cost of the investment-related credit property).

With respect to the second part of the rule, the Treasury Department and the IRS conclude that section 6417(d)(2)(B) effectively places a limitation on determining the amount of an applicable credit by treating the property as being used in a trade or business of an applicable entity, which otherwise subjects the investment-related credit property and the applicable credit to general tax principles that apply to taxable entities. Taxable entities that receive restricted tax exempt amounts are generally required to reduce their basis in the corresponding investment-related credit property under general tax principles, which would limit the amount of the applicable credit. While the no excess benefit rule does not go so far as to require basis in investment-related credit property to be reduced by the restricted tax exempt amount, it limits the applicable credit so that an applicable entity that receives a restricted tax exempt amount does not receive more than the cost of the investment-related credit property financed without those non-taxable funds. The alternative to the no excess benefit rule would be to disallow restricted tax exempt amounts from counting toward the basis in investment-related credit property (a more severe limitation), which would still give effect to section 6417(d)(2)(B) but not accomplish the goals of the IRA as well as the no excess benefit rule does.

However, these final regulations clarify the no excess benefit rule in several ways. These final regulations provide that the determination of whether a tax exempt grant is made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property is made at the time the grant is awarded to the applicable entity. (If only a portion of a tax exempt amount is restricted and another portion is unrestricted, then only the restricted tax exempt amount is considered for purposes of this rule.)

Similarly, these final regulations clarify how to treat a grant that is awarded after investment-related credit property is purchased, constructed, reconstructed, erected, or otherwise acquired. One commenter requested clarification of whether the excessive payment addition to tax may apply if an applicable entity received a Federal grant after the elective payment election submission. Although the comment was unclear, it appears that the commenter was asking whether a grant received after the acquisition of investment-related credit property might be considered a ''restricted tax exempt amount'' that could affect the amount of the applicable credit claimed on the annual return. Similarly, two commenters asked that applicable entities be allowed to self-identify during the pre-filing registration process or the elective payment election process, or both, if they are preparing to apply for a Federal grant that could potentially impact their elective payment amount. These commenters stated that an entity could then amend its return based on whether the grant was received to better determine if the entity should receive the full elective payment amount or be required to recalculate the elective payment amount so as not incur an addition to tax due to a possible excessive payment in subsequent taxable years.

A grant awarded after acquisition of the property is generally not a restricted tax exempt amount because a restricted tax exempt amount is one made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property and, in the commenters' examples, the applicable entity would already have acquired the investment-related credit property before receiving the grant funds. However, to avoid allowing taxpayers to circumvent the no excess benefit rule by acquiring applicable credit property in cases in which the receipt of the grant is assured if an application is made and the applicable entity only needs to finance the purchase until the money is received, these final regulations provide that a grant awarded after acquisition of the property is a restricted tax exempt amount if approval of the grant was perfunctory and the amount of the grant was virtually assured at the time of application.

Commenters asked whether the credit reduction applies to a loan that is not a forgivable loan or to a taxable loan. The Treasury Department and the IRS clarify that loans that need to be repaid are not tax exempt amounts and, thus, will not be restricted tax exempt amounts for purposes of this rule. Commenters also asked about the timing of the credit reduction and whether there is any potential tax credit recapture if a loan for a project that was not intended to be forgivable is later forgiven by the lender. In response, these final regulations add a sentence clarifying that the determination of whether a loan is made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property, and whether forgiveness of that loan is contingent upon the specific purpose being satisfied, is made at the time the loan is approved.

Several commenters did not appear to understand that the no excess benefit rule is a subset of the special rule for investment-related credit property because it applies only to restricted tax-exempt amounts. For example, one commenter opined that, if an applicable entity's general revenue (from charitable donations) is not taxable and does not reduce the credit amount, then the concern of an excessive benefit for specific grants is unfounded. Multiple commenters expressed confusion by the definitions in the rule, asking for further definition (or a safe harbor) of ''restricted tax exempt amount'' or for a definition of ''unrestricted funds.'' Restricted gifts are distinguishable from unrestricted gifts because of the restrictions donors place on the use of the funds. In response to these comments, however, these final regulations add a sentence to the end of § 1.6417–2(c)(3)(ii) stating that the no excess benefit rule does not apply if the tax exempt amount is not received for the specific purpose of purchasing,

constructing, reconstructing, erecting, or otherwise acquiring a property eligible for an investment-related credit. This sentence includes two examples of a tax exempt amount that is not considered to be a restricted tax exempt amount: (1) a tax exempt amount from the organization's general funds and (2) a tax exempt amount the use of which is not restricted to the purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property (such as purchasing an electric vehicle) and could be used for any of several different applicable credit properties (such as purchasing an electric vehicle or purchasing solar panels) or can be put to other purposes (such as purchasing an electric vehicle or making a building more energy efficient). In addition, these final regulations add an example with unrestricted funds to clarify that unrestricted funds do not implicate the no excess benefit rule.

One commenter thought that the no excess benefit rule is administratively impractical and will lead certain applicable entities and their donors to structure donations as unrestricted grants (with an unenforceable expectation that the grant will still be used to fund the energy property). The commenter stated that this lack of a legally enforceable obligation by donors will lead to more opportunities for the misuse of funds and further frustrate Congressional intent to encourage applicable entities to actually build and operate energy property. The Treasury Department and the IRS recognize that unrestricted funds are not impacted by the no excess benefit rule; thus, taxpayers could structure around the no excess benefit rule by requesting unrestricted funds rather than restricted ones. However, these final regulations maintain the decision that, when a restricted tax exempt amount plus a general business credit exceeds the cost of the applicable credit property that was purchased with the restricted tax exempt amount, then the no excess benefit rule is reasonable and necessary, gives effect to section 6417(d)(2)(B), and is consistent with general tax principles.

In response to the commenters asking that applicable entities be allowed to self-identify if they are preparing to apply for a Federal grant that could potentially impact their elective payment amount, as provided in part V of this Summary of Comments and Explanation of Revisions, § 1.6417–5(b)(5)(vii)(E) provides that an applicable entity must provide information on the source of funds the taxpayer used to acquire the property as part of the pre-filing registration process if the applicable credit property is an investment-related credit property. However, the reporting of an actual credit amount is done on the annual tax return. In addition, if an applicable entity makes a valid elective payment election but later determines the amount was calculated incorrectly, these final regulations provide the opportunity to file an amended return or AAR to make the appropriate adjustments to the elective payment amount. *See* part II.B.2 of this Summary of Comments and Explanation of Revisions. As described in part VI of this Summary of Comments and Explanation of Revisions, these final regulations clarify that, if an applicable entity or electing taxpayer amends its tax return or files an AAR to properly adjust an excessive elective payment amount before the IRS opens an examination, then the excessive payment provisions of section 6417(d)(6) and § 1.6417–6(a) would not apply.

A commenter recommended that the final regulations limit or eliminate the proposed rule that tax-exempt funds raised to pay for the cost of a system must be subtracted from the installed system cost before calculating the value of the investment tax credit. The commenter's summary of the proposed rule is not accurate. The excess benefit determination is made after the investment tax credit is calculated and reduces the amount of the calculated credit only to the extent that an excess benefit was created by any restricted tax exempt amounts used to fund the purchase.

One commenter asked how the credit reduction relates to tax-exempt bond financing (which, for certain credits, results in a reduction of the credit amount). The Treasury Department and the IRS confirm that the no excess benefit rule applies after application of any rule, such as sections 45(b)(3), 45Q(f)(8), 45V(d)(3), 45Y(g)(8), 48(a)(4), and 48E(d)(2), that relates to the determination of the underlying applicable credit.

A few commenters said that only Federal grants should be considered in applying the no excess benefit rule. The Treasury Department and the IRS have concluded that all restricted tax exempt amounts should be treated the same way, as any could lead to an excess benefit.

Two commenters stated that an applicable credit property financed with ''recoverable grants'' should not result in the reduction of the applicable credit, stating that recoverable grants are similar to loans although some nonprofits and schools cannot enter into loan agreements. These final regulations do not adopt this comment because, without knowing the conditions upon which the grant proceeds are returned to the grantor, it is not possible to conclude whether such amounts would be considered restricted tax exempt amounts. For example, if a grantor requires return of the grant proceeds to the extent of an excess benefit created, the proceeds required to be repaid would likely not be considered a restricted tax exempt amount for purposes of § 1.6417–2(c)(3), as those amounts are more similar to debt repayment.

One commenter asked that the final regulations provide more specific information about ''other amounts generally exempt from taxation under subtitle A,'' stating that all revenues earned by section 501(c) entities that are not subject to the unrelated business income provisions of sections 511 through 514 are generally exempt from tax. The commenter noted that Examples 2 and 3 in the proposed regulations contained an exempt organization's own unrestricted funds, which the commenter presumed was from income exempt from taxation under subtitle A. The Treasury Department and the IRS agree that the types of income mentioned by the commenter are examples of income ''that is exempt from taxation under subtitle A'' that are intended to be included in basis for purposes of computing the applicable credit amount determined with respect to the applicable credit property, regardless of whether basis is required to be reduced (in whole or in part) by such amounts under general tax principles. However, the Treasury Department and the IRS have identified that certain governmental entities, including Indian tribal governments, may have income that is excluded from Federal income taxation rather than exempt from taxation under subtitle A. The intent of the special rule was to have all of this income count towards the basis of investment-related credit property. Thus, these final regulations add ''or otherwise excluded from taxation'' to the text of § 1.6417–2(c)(3).

A commenter asked how the special rule works if grant or loan proceeds are paid directly to the contractor building the property, providing an example in which (1) another entity helped cover the cost of the applicable credit property for the applicable entity by paying a vendor directly, and (2) the remaining funds were provided by a lender to the applicable entity, with the lender providing the proceeds of the loan directly to the vendor. The commenter

asked whether these arrangements would affect the cost basis for determining the credit amount, which could then impact the applicable entity's ability to make an elective payment election. These final regulations do not address this question since it requires analysis of the details surrounding the contractual arrangements (for example, the terms of the gift and the terms of the loan), as the results depend on the underlying facts.

One commenter asked whether there are any restrictions on the use of elective payment amounts once they are received by the applicable entity; for example, whether they can be used to repay grant match requirements or to pay off debt used specifically to purchase applicable credit property. Section 6417 imposes no restriction on the use an applicable entity makes of the elective payment amount after it has been paid to the entity (although the entity bears the risk that any excessive payments are subject to repayment plus a 20-percent tax).

3. Credits Must Be Determined With Respect to the Applicable Entity or Electing Taxpayer

Proposed § 1.6417–2(c)(4) would have stated that any credit for which an election is made under section 6417(a) must have been ''determined with respect to'' the applicable entity or electing taxpayer, meaning that the applicable entity or electing taxpayer must own the underlying eligible credit property or, in the case of section 45X, conduct the activities giving rise to the underlying eligible credit.[7] This proposed rule, which is consistent with the proposed regulations under section 6418, would prohibit an applicable entity or electing taxpayer from making an election under section 6417(a) for credits transferred pursuant to section 6418, transferred pursuant to section 45Q(f)(3), acquired by a lessee from a lessor by means of an election to pass through the credit to a lessee under former section 48(d) (pursuant to section 50(d)(5)), owned by a third party, or otherwise not determined directly with respect to the applicable entity or electing taxpayer, which the proposed regulations labeled ''chaining.''

The preamble to the proposed regulations noted several potential obstacles to permitting chaining, but requested comments on any limited situations in which exceptions to this proposed rule may be appropriate because they are consistent with the text, design, and intent of the IRA, while also ensuring that such exceptions are not subject to fraud or abuse.

i. Credits Transferred Pursuant to Section 6418

One commenter agreed with the proposed rule, stating that chaining will likely create practical and administrative challenges and make the applicable credits more vulnerable to fraud and abuse. However, multiple commenters stated that chaining is consistent with the text, design, and intent of the IRA and requested that it be allowed. Some commenters advocated for enacting a limited exception tailored to certain situations or limited to certain types of taxpayers, such as (1) a taxpayer whose receipt of credits is directly tied to the taxpayer's involvement in the manufacturing process and its contractual agreements with third-party producers under section 45X, if not considered a producer under section 45X; (2) public-private partnership arrangements under which a governmental entity or nonprofit entity can be treated as the owner of the project while receiving private capital from the private, for-profit partner to finance the project; (3) governmental entities and unrelated section 501(c)(3) entities on whose premises the project is located; (4) green banks and other public financing entities; (5) governmental agencies; (6) public power systems that entered into a long-term power purchase agreement with respect to the electricity to be produced at a qualifying facility; (7) entities conducting the activity that do not own the applicable credit property; (8) a transferor and transferee that are joint tenants or partners in a partnership completing a single return, or cross-referencing returns, in which the transfer and elective payment elections are made concurrently on the due date of the return (or later filing date under a valid extension); or (9) in cases in which an ERISA plan, entity holding plan assets, or an entity in which an ERISA plan or entity holding plan assets is the primary equity holder, the transferee would not own more than 50 percent of the seller, the transferee does the same due diligence required of all transferees, the transferee pays a minimum of 90 percent of the face value of the credit in cash, and, if the purchasing ERISA plan has an indirect interest in the proceeds of the sale, it is not permitted to buy more than the commensurate share of the proceeds it would have received if the seller had elected to sell the tax credit to another person or entity with no relationship to the seller. One commenter asked that any rule prohibiting chaining be limited to potentially abusive situations in which a principal purpose of the structure is to avoid the transfer election rules or otherwise allow taxpayers that are not applicable entities to make elective payment elections.

After considering comments, the Treasury Department and the IRS have determined that sections 6417 and 6418, read together, are most straightforwardly understood as creating two separate, mutually exclusive regimes regarding credit monetization. While the Treasury Department and the IRS acknowledge that no specific language in section 6417 or 6418 directly prohibits chaining, not permitting chaining allows for more straightforward application of the statute as a whole. This interpretation reads ''determined with respect to'' in both sections 6417 and 6418 to require the entity to own the underlying applicable credit property with respect to which the applicable credit is determined and conduct the activities giving rise to the applicable credit or, in the case of section 45X, for which ownership of applicable credit property is not required, to be considered (under the section 45X regulations) the taxpayer with respect to which the section 45X credit is determined.

The Treasury Department and the IRS also remain concerned about the administrability of chaining and the scope for fraud and abuse. The Treasury Department and the IRS considered commenters' suggestions on how chaining might be limited to certain types of taxpayers or certain situations. While there may be ways in which limiting chaining to certain types of entities or those performing certain activities could potentially reduce risks of fraud and abuse, the Treasury Department and the IRS have concluded, based on the comments, statutory text, and available information, that the IRS would face substantial challenges in attempting to distinguish those types of taxpayers or situations from other applicable entities or other situations. For example, the existing pre-filing registration process and portal, a key anti-fraud and anti-abuse feature specifically authorized by sections 6417 and 6418, are not capable of administering such distinctions as, for example, the proposed requisite relationships between the parties, many of which would require assessments of particular circumstances or other fact-dependent inquiries. The Treasury Department and the IRS have not determined how the proposed distinctions or criteria could be

[7] The section 45X credit requires that the taxpayer produce eligible components. Thus, an applicable entity or electing taxpayer must produce eligible components to claim the credit.

sufficiently verified in an administratively reasonable manner during the pre-filing registration process. Thus, based on available information, the Treasury Department and the IRS could not conclude that any chaining rule could be limited in the manner taxpayers proposed.

Furthermore, any chaining rule would need ancillary rules to address operational differences between the two statutory provisions and complications that would necessarily arise from chaining. For example, absent ancillary rules to address differences between the two statutes, there would be inconsistencies in the requirements for elective payment elections made by applicable entities for applicable credits that are determined with respect to the applicable entity and elective payment elections made by applicable entities for transferred credits (even if a taxpayer was making both elections for the same type of credit). Transfer elections under section 6418 with respect to credits determined under sections 45, 45Q, 45X, 45V, and 45Y are made on an annual basis, whereas elective payment elections under section 6417 with respect to these credits are made for a multi-year period and are irrevocable. Additionally, transfer elections under section 6418 are permitted to be made for a portion of eligible credits determined with respect to an eligible credit property, whereas section 6417 does not on its face permit partial elections. A partnership making the election under section 6417 must hold the applicable credit property ''directly,'' language that is not a clear fit for transferred credits. If a chaining rule were permitted, the rules in section 6418 would need to accommodate the election requirements in section 6417, but the Treasury Department and the IRS could not determine, based on comments received and available information, how the differences between elective payment elections and transfer elections could be addressed in an administratively reasonable manner.

Similarly, an applicable entity that is both a transferee under section 6418 and an applicable entity under section 6417 could be subject to both the excessive credit transfer addition to tax under section 6418(g)(2) and the excessive payment addition to tax under section 6417(d)(6). None of the comments addressed how the excessive credit transfer or excessive payment additions to tax should apply in the case of a chaining rule, including whether there would be authority to avoid application of both additions to tax by the same applicable entity.

Additionally, none of the comments addressed how the basis reduction and recapture rules under sections 6418(g)(3) and 6417(g) would work in the case of a chaining rule, given that transferred credits presumably would need to be treated as ''determined with respect to'' the applicable entity for purposes of section 6417(g).

A chaining rule would also create administrative challenges with regard to the pre-filing registration process that are separate from the challenge of potentially distinguishing types of entities or situations, and which were not addressed in comments. A facility or property intended to produce credits that would be chained would appear to need to be registered twice—first, under section 6418 as an eligible credit property and second, under section 6417 as an applicable credit property—which would result in two different registration numbers with respect to the same facility or property. Both of these registrations would presumably need to occur after the eligible/applicable credit property was placed in service, but before either taxpayer filed their annual tax return.

Finally, the Treasury Department and the IRS remain concerned that a rule allowing for chaining could increase risks of fraudulent elective payment elections as well as fraudulent transfers of credits (such as transferring credits that have not been earned by the transferor and therefore do not exist), given a range of factors including the limited time before filing season that the IRS would have to verify information as part of the pre-filing registration process, the transferor's incentives to shift risk to the transferee, and the difficulties of recovering monies once already paid out to applicable entities. Comments received by the Treasury Department and the IRS have not provided information that addresses these concerns.

Thus, these final regulations adopt the rule as proposed. However, the Treasury Department and the IRS will continue to consider potential chaining rules that would address these concerns and be consistent with the statutory framework, as well as the legislative purpose, of sections 6417 and 6418. In particular, the Treasury Department and the IRS will be monitoring uptake and efficiency of the market for transferred credits and whether additional or different approaches may be useful to improve the functioning of the market to ensure that the provisions are functioning consistent with Congress's intent in enacting the IRA. The Treasury Department and the IRS will also be monitoring uptake of the elective payment election, including whether additional or different regulatory approaches may be useful to ensure broad access to the clean energy tax credits consistent with Congress's intent in enacting the IRA. At the same time, the Treasury Department and the IRS will be monitoring the risk of improper payments with respect to sections 6417 and 6418 and will consider additional regulatory or administrative action to reduce such risk as experience is gained with respect to these novel provisions.

ii. Credits Allowed Pursuant to Section 45Q(f)(3)

As described in part II.C.3 of this Summary of Comments and Explanation of Revisions, proposed § 1.6417–2(c)(4) would have provided that no election may be made under section 6417(a) for credits transferred pursuant to section 45Q(f)(3).

Multiple commenters opined that section 45Q credits transferred pursuant to section 45Q(f)(3)(B) should be considered ''determined with respect to'' the transferee. Commenters posited that this is the correct result because those transferees conduct carbon capture activities necessary to give rise to a section 45Q credit, citing the language in proposed § 1.6417–2(c)(4) that ''[a]n applicable credit is determined with respect to an applicable entity or electing taxpayer in cases where the applicable entity or electing taxpayer owns the underlying eligible credit property or, if ownership is not required, otherwise conducts the activities giving rise to the underlying eligible credit.'' Commenters further stated that performing those carbon capture activities makes them distinguishable from taxpayers that are transferred a credit under section 6418 or an election under section 50(d)(5).

The Treasury Department and the IRS have concluded that a taxpayer that is transferred a section 45Q credit as a result of an election under section 45Q(f)(3) is not the taxpayer with respect to which the section 45Q credit is determined. Under section 45Q(f)(3)(A)(ii), a section 45Q credit is attributable to the person that owns the carbon capture equipment *and* physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide (emphasis added). Further, under § 1.45Q–1(h)(3), it is the taxpayer described in § 1.45Q–1(h)(1) to whom the section 45Q credit is attributable (electing taxpayer), that may elect to allow the person that enters into a contract with the electing taxpayer to dispose of the qualified carbon oxide (disposer), utilize the qualified carbon

oxide (utilizer), or use the qualified carbon oxide as a tertiary injectant (injector) to claim the credit (credit claimant) (section 45Q(f)(3)(B) election). Contrary to commenters' assertions, it is not sufficient for a party to only conduct carbon capture activities to be eligible for a section 45Q credit. Further, the requirement of ownership in the section 45Q statute and regulations means the commenters' argument that the language in § 1.6417–2(c)(4) allows a section 45Q credit to be determined with respect to an applicable entity or electing taxpayer when the party ''otherwise conducts the activities giving rise to the underlying applicable credit'' is misplaced. That language in § 1.6417–2(c)(4) applies only in the case of an applicable credit for which ownership of property is not required, which is not the case with respect to a section 45Q credit. Thus, these final regulations clarify in § 1.6417–2(c)(4) that the only applicable credit for which ownership is not required is the section 45X credit. While the activities of a contractor may be necessary for a section 45Q credit to be determined, ultimately, the credit is attributable to and determined by the person that both owns the equipment and physically or contractually ensures the capture and disposal, injection, or utilization of such qualified carbon oxide. Thus, these final regulations adopt the proposed regulations without change on this issue.

Other commenters implied that a section 45Q(f)(3) election is not a transfer, just the attribution of the credit to the claimant. The Treasury Department and the IRS note that the relevant standard under section 6417 for making an elective payment election is that a section 45Q credit must be determined with respect to the applicable entity or electing taxpayer. Thus, while the proposed regulations used the term ''transfer,'' the result would have remained unchanged if the proposed regulations used the term 'attributed' in referring to a party that receives the credit as a result of a section 45Q(f)(3)(B) election. To maintain consistency with § 1.45Q–1(h)(3), these final regulations use the word ''allowed,'' but the result is unchanged from the proposed regulations.

One commenter asked that, in the case of a taxpayer that is registering a single process train for purposes of a section 45Q credit and will make a section 45Q(f)(3)(B) election to allow all or a portion of that credit to disposers/utilizers, the final regulations require information about such election, as well as an acknowledgment by the owner of the single process train that the disposer(s)/utilizer(s) may make a section 6417 election for its portion of section 45Q credit allowed, using the registration number obtained by the owner of the single process train. As described previously, a section 45Q credit that is received as the result of a section 45Q(f)(3)(B) election is not determined with respect to the recipient, and therefore the recipient is ineligible to make a section 6417 election and has no need to complete pre-filing registration.

Commenters stated, citing Rev. Rul. 2021–13, 2021–30 IRB 152, that a taxpayer does not need to own every component of a single process train to claim a section 45Q credit. The Treasury Department and the IRS agree that guidance under section 45Q does not require a taxpayer to own every component of a single process train and have revised the language under § 1.6417–1(e)(3) (defining applicable credit property with respect to the section 45Q credit) accordingly.

iii. Credits Acquired by a Lessee From a Lessor by Means of an Election To Pass Through the Credit to a Lessee Under Former Section 48(d) (Pursuant to Section 50(d)(5))

Several commenters stated that tribes cannot monetize their elective payment amounts by making transfer elections under section 6418.[8] These commenters stated that tribes should thus be able to structure projects through sale-leasebacks or inverted leases, which would allow tribes to retain ownership of the project while a third party receives tax benefits in exchange for contributing capital to the project.

The proposed regulations did not specifically address sale-leaseback transactions under section 50(d)(4), and the Treasury Department and the IRS have determined that adopting an explicit rule with respect to sale-leaseback transactions in these final regulations is not necessary. Such a rule is unnecessary because a sale-leaseback transaction under section 50(d)(4) is one in which a purchaser/lessor of investment credit property owns the underlying property with respect to which an applicable credit is determined. In that case, provided all of the applicable rules are met, because the applicable credit is determined with respect to applicable credit property owned and treated as originally placed in service by the purchaser/lessor, the purchaser/lessor can make an elective payment election with respect to the property under section 6417.

With respect to inverted leases, the Treasury Department and the IRS understand the commenters to be referring to an election to pass through the applicable credit to a lessee under former section 48(d) (pursuant to section 50(d)(5)). The commenters pointed out that a rule allowing the lessee to make a section 6417 election with respect to a credit would allow tribes to retain ownership of the project while a third-party receives tax benefits in exchange for contributing capital to the project. There is a distinction between sale-leaseback transactions under section 50(d)(4) and lease-passthrough elections under former section 48 (pursuant to section 50(d)(5)). In the latter case, it is the lessor that is the party with respect to which the credit is determined, and not the lessee that is allowed to claim the credit as a result of the election. Therefore, the lessee does not meet the requirement of section 6417(a), which requires the applicable credit to be determined with respect to the applicable entity making the elective payment election. The Treasury Department and the IRS have concluded that the rationale underlying the proposed rule is correct. Thus, these final regulations adopt the proposed rule without change.

iv. Ownership

Proposed § 1.6417–2(c)(4) would have provided that applicable credits must be determined with respect to the applicable entity or electing taxpayer, and further explained that an applicable credit is determined with respect to an applicable entity or electing taxpayer in cases in which the applicable entity or electing taxpayer owns the underlying applicable credit property or, if ownership is not required, otherwise conducts the activities giving rise to the underlying applicable credit. Commenters addressed the ownership aspect of this proposed rule. A commenter asked for clarity on the types of activities that would be required to give rise to the underlying applicable credit and whether, if the electing taxpayer owns the property for which the applicable credit is determined, they are also required to conduct activities giving rise to the underlying applicable credit. This commenter stated that property owners often contract with a third-party for operations and maintenance. This

[8] While it is true that section 6418(f)(2) defines ''eligible taxpayer'' for purposes of transfer election eligibility as ''any taxpayer which is not described in section 6417(d)(1)(A)'' (and thus an Indian tribal government (including agencies and instrumentalities) described in section 6417(d)(1)(A)(iv) and § 6417–1(c)(3) and –1(k) would not be eligible to make a transfer election), a Tribal entity that is not described in section 6417(d)(1)(A) would be eligible to make a transfer election under section 6418.

commenter also asked for clarification on whether property ownership is sufficient to satisfy any other requirements. Lastly, the commenter requested additional information on the types of documentation needed to establish ownership of the property.

It is generally outside of the scope of these final regulations to address the types of activities required to determine the underlying applicable credits. However, to help clarify, these final regulations specify that the applicable entity or electing taxpayer must both own the underlying applicable credit property and conduct the activities giving rise to the applicable credit or, in the case of a section 45X credit for which ownership of applicable credit property is not required, to be considered (under the section 45X regulations) the taxpayer with respect to which the section 45X credit is determined. That is, with respect to all of the applicable credits, with the exception of the section 45X credit, ownership of qualified property is required. It is also true that, in order to be eligible for an applicable credit, it is necessary to first complete activities required by the Code section(s) relevant to the determination of the applicable credit. To the extent that an applicable entity or electing taxpayer contracts with a third party for operation or maintenance of the property, the applicable entity or electing taxpayer must meet the applicable credit requirements for the credit to be determined with respect to such entity or taxpayer. Lastly, with respect to additional information on documentation necessary for establishing ownership, the determination will be made based on the regulations for the particular applicable credit or bonus credit amount as well as Federal income tax principles. Ultimately, the principle incorporated into these final regulations, which is based on language in section 6417(a), is that the applicable credit must have been determined with respect to the applicable entity or electing taxpayer making the elective payment election.

One commenter asked that the final regulations contain a safe harbor for determining the Federal tax owner of the tax credit eligible project and recommended the safe harbor under section 142(b) of the Code as a model. Section 142(b) requires certain facilities financed with tax-exempt bonds to be owned by a governmental unit. The safe harbor under section 142(b) treats property that is subject to a lease, a management contract, or other similar operating agreement to be treated as owned by the governmental unit under specified conditions. Specifically, the lessee (or manager or operator) must make an irrevocable election not to claim depreciation or an investment credit with respect to the property; the term of the agreement must not exceed 80 percent of the reasonably expected economic life of the property; and the lessee (or manager or operator) must have no option to purchase the property other than at fair market value as of the time the option is exercised. The commenter proposed language for a safe harbor for purposes of section 6417 that included language nearly identical to that under section 142(b) but that also included a requirement that the applicable entity own the property under State or local law. These final regulations do not adopt the commenter's proposal because ownership is determined based on general Federal tax principles, including any requirements applicable to the relevant applicable credit.

D. Denial of Double Benefit

Section 6417(a) allows an applicable entity or electing taxpayer other than a partnership or S corporation to be treated as making a payment against the tax imposed by subtitle A for the taxable year with respect to which such credit was determined equal to the amount of such credit. Section 6417(c)(1)(A) provides that, for an electing taxpayer that is a partnership or S corporation, the Secretary will make a payment to such partnership or S corporation with respect to a credit determined with respect to applicable credit property held directly by the partnership or S corporation equal to the amount of such credit. Sections 6417(e) and (c)(1)(B) each provide that such credit is reduced to zero and, for any other purposes of the Code, is deemed to have been allowed to such entity for such taxable year. Section 6417(h) provides that the Secretary must issue guidance necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment (in the case of an electing taxpayer that is a partnership or S corporation) or deemed payment (in the case of all other electing taxpayers and applicable entities) made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

Proposed § 1.6417–2(e)(2) and (3) would have addressed the methodology for determining the elective payment election amount and reducing the applicable credit to zero while treating the applicable credit as allowed for the taxable year for all other purposes of the Code with respect to applicable entities and electing taxpayers other than partnerships or S corporations as provided in section 6417(e). The methodology with respect to a payment made to a partnership or S corporation is described in part IV of this Summary of Contents and Explanation of Revisions.

Under the proposed regulations, an applicable entity or electing taxpayer (other than an electing taxpayer that is a partnership or S corporation) making an elective payment election would have applied section 6417(e) by taking the following steps. First, the taxpayer would have computed the amount of the Federal income tax liability (if any) for the taxable year, without regard to the GBC, that is payable on the due date of the return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on the amount of tax under section 38. Second, the taxpayer would have computed the allowed amount of GBC carryforwards carried to the taxable year plus the amount of current year GBCs (including current applicable credits) allowed for the taxable year under section 38 (that is, in accordance with all the rules in section 38, including the ordering rules provided in section 38(d)). Since the election would have been required to be made on an original return, any business credit carrybacks would not have been considered in determining the elective payment amount for the taxable year. Third, the taxpayer would have applied the GBCs allowed for the taxable year as computed in step 2, including those attributable to applicable credits as GBCs, against the tax liability computed in step 1. Fourth, the taxpayer would have identified the amount of any excess or unused current year business credit, as defined under section 39 of the Code, attributable to current year applicable credit(s) for which the applicable entity is making an elective payment election. The amount of such unused applicable credits would have been treated as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credits are determined (rather than having them available for carryback or carryover) (net elective payment amount). Fifth, the taxpayer would have reduced the applicable credits for which an elective payment election is made by the amount (if any) allowed as a GBC under section 38 for the taxable year, as provided in step 3, and by the net elective payment

amount (if any) that is treated as a payment against tax, as provided in step 4, which results in the applicable credits being reduced to zero.

Proposed § 1.6417–2(e)(3) would have provided, consistent with section 6417(e), that the full amount of the applicable credits for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50 and calculation of any underpayment of estimated tax under sections 6654 and 6655 of the Code. The proposed regulations gave several examples illustrating these rules.

The proposed regulations requested comments on whether future guidance should expand or clarify the methodology that an applicable entity follows to compute its elective payment amount. The proposed regulations also requested comments on additional Code sections under which it may be necessary to consider the applicable credit to have been deemed to have been allowed for the taxable year in which an elective payment election is made.

Multiple commenters asked that the final regulations revise or not include the section 38 ordering rule in § 1.6417–2(e)(2). Commenters stated that, under the proposed ordering rules, if a taxpayer reaches the section 38(c) limitation using prior year credit carryforwards and current year applicable credits, which may be considered used ahead of some other non-applicable credits based on the section 38(d) ordering rule, then the taxpayer would lose the benefit of treating the applicable credit as a payment because it could have used the non-applicable credits to reach the section 38(c) limitation. Instead of receiving the benefits of treating the applicable credit as a payment, the taxpayer could be required to carry otherwise usable non-applicable credit GBCs back or forward to other taxable years. These commenters suggested that the elective payment amount should not be reduced if a taxpayer has non-applicable credits that can be used to reduce tax liability to the section 38(c) limitation. A commenter thought specifically that the language in section 6417(e) should not be read as a reference to the GBC ordering rules. The commenter thought that the proposed rule's application of the GBC ordering rules goes beyond merely addressing a double benefit issue and effectively limits the availability of direct payments, contrary to the statutory language in section 6417. The commenter thought that the proper application of section 6417(e) is demonstrated in proposed § 1.6417–2(e)(3)—for example, deeming the applicable credit as allowed for purposes of basis reduction, recapture rules, and estimated tax calculations.

The Treasury Department and the IRS note that the fact pattern raised by commenters will have no relevance, and application of the rules in § 1.6417–2(e) should be straightforward, for any applicable entities without taxable income to offset or with only applicable credits. However, the Treasury Department and the IRS agree with commenters that the GBC ordering rules can result in a lowered elective payment amount for other applicable entities and/or electing taxpayers; thus, these final regulations include changes to address that result.

Section 6417(a) provides that the applicable entity will be treated as making a payment against tax equal to the amount of the credit, and section 6417(d)(4) references such payment, as noted by commenters. It is section 6417(e) that creates a bifurcated treatment for purposes of the Code by reducing the credit to zero, but for any other purposes under the Code, deeming the applicable credit to have been allowed to such entity for such taxable year.

In reviewing these provisions, the Treasury Department and the IRS have determined that section 38 is the section of the Code with respect to which applicable credits should be reduced to zero as provided under section 6417(e), other than as explained in this paragraph. As section 38 is the operative provision under which all of the applicable credits would be taken into account and allowed to reduce tax liability, it is reasonable to read the no double benefit rule in section 6417(e) to reduce the applicable credits to zero for purposes of section 38. This prevents a direct double benefit that could be achieved from claiming the credits. However, preventing such a double benefit does not require reducing the applicable credit to zero for purposes of section 38 to the extent an applicable credit is needed to reduce tax liability up to the section 38(c) limitation. In addition, reducing an applicable credit to zero in such situations would unnecessarily disadvantage an applicable entity or electing taxpayer filing on extension by preventing them from claiming the applicable credit as a current year GBC. This is because, to the extent applied as a credit, the applicable credit will reduce tax liability as of the due date of the return, while the elective payment amount is not treated as being made until the later of the due date of the return or the date of filing. *See* section 6417(d)(4). Treating the entire applicable credit as zero in the case of an applicable entity or electing taxpayer filing on extension could result in more tax due on the due date of the return and, if not paid, would result in the applicable entity or electing taxpayer owing interest and could result in penalties assessed against the taxpayer.

The proposed rules accounted for this situation, and as noted by a commenter, helped mitigate any potential estimated tax penalties if amounts owed were not paid by the due date. No commenters objected to this aspect of the proposed rule. Thus, the Treasury Department and the IRS conclude that these final regulations should treat the applicable credit as a credit for section 38 in the limited situation that the applicable credit is needed to reduce tax liability up to the section 38(c) limitation. It is also noted that, for an applicable entity or electing taxpayer that is filing and making an election by the due date of their return, there should be no difference in outcome between treating an applicable credit resulting in an elective payment as reduced to $0 for section 38, or as a credit that reduces tax liability up to the section 38(c) limitation and a payment beyond the section 38(c) limitation.

Based on these conclusions, the Treasury Department and the IRS have revised the rules and examples in proposed § 1.6417–2(e) and have added a new example. Under these final regulations, there is still a description of steps for an applicable entity or electing taxpayer to complete, but there is a change in the ordering of the steps and in the calculation of the net elective payment amount. The net elective payment amount, consistent with the proposed regulations, is the amount of an applicable credit that is treated as a payment against the tax imposed by subtitle A. In these final regulations, the net elective payment amount is equal to the lesser of (1) the aggregate of all applicable credits or (2) the total GBC (including applicable credits) over the total GBC allowed against tax liability (determined with regard to section 38(c)). Under these final regulations, an applicable entity or electing taxpayer will calculate the net elective payment amount prior to applying the ordering rules of section 38(d). These revisions allow an applicable entity or electing taxpayer that has other non-applicable credit GBCs to lower tax liability to the section 38(c) limitation using the non-applicable credit GBCs without impact from applicable credits. But the revisions also require a taxpayer to use an applicable credit as a current year

GBC to the extent that it is necessary to reduce tax liability up to the limitation under section 38(c). In all other situations, the applicable credit will be zero for purposes of section 38 and the applicable credit will be considered a payment of tax on the later of the due date of the return or filing (as prescribed by section 6417(d)(4)).

In sum, these revisions to proposed § 1.6417–2(e) and the examples ensure two outcomes. First, consistent with commenters' recommendations, these final regulations ensure that taxpayers making an elective payment election will not have to delay using non-applicable GBCs because of an applicable credit. Second, consistent with the proposed rule, these final regulations allow a taxpayer to benefit from a reduction in tax liability as of the due date of the return by treating an applicable credit as a credit for purposes of section 38, up to the section 38(c) limitation.

One commenter urged that the final regulations revise proposed § 1.6417–2(e)(3) to treat the entire elective payment amount as a payment against tax for purposes of the calculations under section 59A of the Code, relating to the tax on base erosion of taxpayers with substantial gross receipts (also known as the base erosion anti-abuse tax or BEAT), so that the amount (regardless of any portion included in the GBC calculation) of a section 45X credit for which an elective payment election is made is treated as zero for purposes of section 59A. In contrast with the analysis earlier for section 38, the Treasury Department and the IRS conclude that treatment of an applicable credit for purposes of BEAT falls within the portion of section 6417(e) that provides, ''for any other purposes under this title [26],'' the applicable credit is deemed to have been allowed to such entity for such taxable year. In contrast to section 38, BEAT is not a provision pursuant to which the applicable credits would be directly claimed, and treatment of the elective payment amount as suggested by the commenter would conflict with the language in section 6417(e). Further, since section 6417(e) provides that applicable credits are treated as credits for any other purposes of the Code, the applicable credits are not analogous to other credits that are considered pre-payments of tax and for which the BEAT regulations have an exception. *See* § 1.59A–5(b)(3)(i)(C) (providing that regular tax liability is not reduced for ''[a]ny credits allowed under sections 33, 37, and 53'' of the Code. Section 33 credits are related to withholding of tax at the source with respect to payments to foreign corporations and nonresident aliens. Section 37 is a credit for the overpayment of taxes. Section 53 relates to a credit for alternative minimum tax paid in a prior year). Thus, these final regulations adopt the rule in § 1.6417–2(e)(3) as proposed.

Another commenter requested clarification on apparent ambiguities in proposed § 1.6417–2(e)(2)(ii) and (iii). As the revisions in these final regulations removed the text that the commenter thought was unclear, it is not necessary to address these comments in these final regulations.

Although no commenters specifically raised the application of potential penalties under section 6651 in the context of the proposed denial of double benefit rule, these final regulations modify § 1.6417–2(e)(3) to clarify that a taxpayer may also be subject to a penalty under section 6651(a)(2) of the Code relating to the taxpayer's failure to timely pay tax if a return is filed after the original due date.

E. Timing of Payment

Section 6417(d)(4) provides that the payment described in section 6417(a) is treated as made on (1) in the case of any government, or political subdivision, described in section 6417(d)(1) and for which no return is required under section 6011 or 6033(a), the later of the date that a return would be due under section 6033(a) if such government or subdivision were described in that section or the date on which such government or subdivision submits a claim for credit or refund (at such time and in such manner as the Secretary provides), and (2) in any other case, the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed. Proposed § 1.6417–2(d) generally follows the statutory provision. Commenters addressed many aspects of this rule.

1. Processing the Elective Payment

Several commenters asked that the final regulations specify a timeframe within which an applicable entity will receive an elective payment amount. These commenters stated that having certainty on the time it will take to receive payments is important for purposes of securing needed financing or other funding while they are waiting to receive their elective payment amounts. One commenter stated that, if the IRS takes several months to process the payments, an organization may default on its loan payment(s). A few commenters speculated that an elective payment amount could be delayed for many months after filing, given slow processing times by the IRS. One commenter asked that the IRS impose a process similar to Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax,* which requires the IRS to process a tax refund within 45 days from the date it is filed, for elective payment amounts. Another commenter suggested that the final regulations require written notice to applicable entities if the IRS will not meet the timeline, with an explanation and a date payment can be expected. Several commenters requested that the time between when the payments can be claimed and the time of payment be as short as possible, as delays can increase an organization's costs.

The Treasury Department and the IRS decline to specify a particular time within which an elective payment election will be processed. Several factors, including the volume of returns on which elective payment elections are made and whether any particular return contains complete and accurate information, will affect processing time. However, as the preamble to the proposed and temporary regulations stated, the pre-filing registration is intended to allow the IRS to verify certain information about a taxpayer in a timely manner while mitigating the risk of fraud or improper payments and then process the annual tax return with minimal delays.

2. Number of Payments

One commenter asked whether the elective payment amount would be provided in one lump sum or in multiple payments. The statute and these final regulations contemplate one return containing the elective payment election, and one payment to the taxpayer, per taxable year. The only exception to this rule is if a taxpayer's superseding or amended return increases the applicable credit amount reflected on the original return, as described in part II.B.2 of this Summary of Comments and Explanation of Revisions.

3. Accelerated Payments

Several commenters asked that payments be provided to applicable entities before the time the statute provides; for example, that applicable entities be allowed to submit elective payment elections as soon as qualified energy properties are placed into service; that the IRS provide a pre-payment of the tax credit of some percentage (for example 20 to 50 percent) based on the ''pre-filing record'' (and that pre-filing occur at the

beginning of construction); or that ''third-party attestations'' or Treasury verification of initial pre-filing information could support the distribution of cash refunds at that time (which does not preclude the possibility of later audits). Because section 6417(d)(4) provides the date the payment described in section 6417(a) is treated as made on, which must occur prior to the IRS providing the payment, the Treasury Department and the IRS have determined it is not possible to provide for accelerated payments, including in the scenarios advocated by commenters. Thus, these final regulations do not adopt these comments.

4. Payments Against Estimated Tax

In response to several stakeholder responses to Notice 2022–50 asking whether an applicable entity could treat an applicable credit arising during a quarter as a payment against quarterly estimated tax (assuming such an amount was due), the proposed regulations stated that no special rule was needed because taxpayers can determine, based on their projected tax liability, the correct amount of estimated tax to pay in order to avoid a section 6654 or section 6655 estimated tax penalty at the end of the year.

In response to the proposed regulations, multiple commenters continued to advocate that applicable credits be able to be used against estimated tax payments or stated that the Treasury Department and the IRS should allow for quarterly elections and payments even though the elective payment is not deemed to occur until the later of the due date or filing date of the applicable tax return. Some commenters stated that allowing properly determined credits to be used against quarterly estimated tax payments could more efficiently provide taxpayers with the funds to make and sustain investments, that a delay in realizing the value of the credits would increase pressure on cash flows and working capital, and that the inability to offset quarterly estimated tax liability with an applicable credit is inconsistent with the purpose of section 6417. Commenters opined that the Treasury Department and the IRS could allow eligible taxpayers to make and receive quarterly elections and payments, align quarterly elections with quarterly returns, and replicate the quarterly excise tax reporting mechanism similar to rules under sections 6426 and 6427 of the Code, allowing eligible entities to claim payments every quarter. One commenter recommended that applicable entities be permitted to include applicable credits within the calculation of estimated tax for Form 4466. Another commenter suggested the Treasury Department and the IRS could exercise its authority under section 6655(j) to promulgate regulations impacting estimated tax penalties.

The distinction between estimated tax installments (which are the obligation of the taxpayer to calculate) versus an end of year estimated tax penalty (that may result if the taxpayer's calculations are not correct and/or if the taxpayer's annual tax liability is not paid on the due date for the return, including a ''payment'' that is made through an elective payment election) appeared to confuse several commenters. For example, one commenter stated that proposed § 1.6417–2(e)(3) could be interpreted to permit a taxpayer to calculate their estimated tax installments and any underpayment by considering properly determined refundable credits in making quarterly estimated tax payments, even though the elective payment amount is not deemed to be made until the later of the due date or filing date of the applicable tax return.

Some commenters asked for clarifications to proposed § 1.6417–2(e)(4), Example 5, which describes a situation in which an electing taxpayer filed its tax return on a timely filed extension after the due date of the return (without extensions). Example 5 in the proposed regulations would have provided:

> ''[e]ven though W did not owe tax after applying the net elective payment amount against its net tax liability, W may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.''

Commenters asked that the applicable credits be considered to have been estimated tax payments, resulting in no tax liability at the end of the year or, at a minimum, that final regulations waive estimated tax penalties related to an elective payment election. In other words, commenters requested that the elective payment election amount may be applied both as a reduction to any quarterly estimated tax payments (without penalty) and to offset any taxes that are reported on the taxpayer's income tax return for any taxable year in which those elections are in effect.

These final regulations do not adopt these suggestions. Section 6417(d)(4) generally requires a single payment and clearly states the timing of when the payment is treated as made, which is, at the earliest, the return due date (determined without regard to extensions). In that sense, payments made under section 6417 are no different than other kinds of payments a taxpayer may make as part of filing a timely return (excluding extensions) or making a payment with a timely filed application for extension. Taxpayers can adequately determine whether their quarterly estimated payments are sufficient to avoid estimated income tax penalties based on their projected income and by considering any expected, properly determined applicable credit. For the same reasons, applicable credits may not be included to calculate estimated tax for Form 4466, which, under section 6425(a)(1) of the Code must be filed after the close of a corporation's taxable year, on or before the 15th day of the fourth month following the close of such taxable year, and prior to the filing of the corporation's return for such taxable year. Comments requesting the promulgation of regulations under section 6655 are outside the scope of these final regulations. For the sake of clarity, however, these final regulations modify Example 5 under § 1.6417–2(e)(4) to better reflect the conclusion that a taxpayer that files its return after the due date for filing (excluding extensions) may also be subject to a penalty under section 6651(a)(2) for the failure to timely pay tax, even if it did not owe tax after applying the net elective payment amount against its net tax liability.

Some commenters requested clarification on whether the elective payment amount under section 6417(a) is subject to the same treatment as estimated payments against income taxes under § 301.6402–4; as a refund other than estimated taxes; as a refundable tax credit; or as some other form of special payment. Commenters also stated that, if the elective payment amount is treated as a refund, the final regulations should clarify what specific refund procedures under the Code apply.

These final regulations do not adopt a specific rule related to these comments. As previously described, section 6417(d)(4) expressly states the timing of when the payment is treated as made. Therefore, the payment under section 6417 is distinguishable from both an estimated payment made during the taxable year and a refundable credit. A refundable credit reduces tax liability as of the original due date of a return, while a payment of tax relates to a tax liability after application of credits and is treated as occurring on the date the payment is made.

One commenter requested clarification that, under proposed § 1.6417–2(e)(2), an elective payment election does not override accounting for section 45X credits within the normal GBC limitation under section 38, even if an elective payment election is made. The commenter asked that the ''net elective payment amount'' should only be the excess over the amount allowable in the section 38 calculation. The commenter stated that this net elective payment is then treated as a payment against tax for the year but that, given the examples provided in the proposed regulations, their interpretation was that any amount utilized as part of the section 38 limitation is allowed to offset estimated taxes during the taxable year; whereas the net elective payment amount is not allowed as a reduction to estimated taxes as it is deemed paid on the date the return is filed. The revisions to proposed § 1.6417–2(e)(2) in these final regulations, including the definition of net elective payment amount and the examples in § 1.6417–2(e)(4), are intended to clarify that any amount utilized as part of the section 38 limitation is allowed to reduce tax liability for purposes of determining any underpayment of estimated tax; whereas the net elective payment amount is not treated as reducing tax liability as it is deemed paid on the later of the due date of filing the return or the date the return is filed.

The proposed regulations addressed the interaction between the timing rule in section 6417(d)(4) and the denial of double benefit rule in section 6417(e). In considering the comments in relation to timing of the payment, it is clear from section 6417(d)(4) that the payment is considered made at the later of the due date of filing the tax return or the actual filing. Further, rather than as suggested by most commenters, it is this timing rule and not the rules in proposed § 1.6417–2(e)(2) and (3) (regarding ordering and use of the applicable credit) that creates the commenters' issue related to penalties for underpayment of estimated taxes. For example, if a taxpayer with a tax liability was solely relying on the elective payment amount to cover the tax liability, such taxpayer could receive a payment related to the applicable credit but could still incur an estimated tax penalty because section 6417(d)(4) explicitly states that the payment of tax occurs on the date on which such return is filed. These final regulations do revise proposed § 1.6417–2(e)(2), but the revisions continue to allow taxpayers the beneficial approach of the proposed regulations in this respect. Under the revisions, if any of the applicable credits for which the election is being made are needed to reach the limitation under section 38(c), then those credits are treated as reducing tax liability as of the due date of the return (excluding extensions). As one commenter stated, while the proposed rule does not eliminate the potential for an estimated tax penalty, the approach can mitigate the potential penalty by minimizing the amount of tax due on the return. The same result is achieved in these final regulations. While commenters are suggesting it is possible to allow a payment as having been made at various times of the year, these comments contradict the timing of payment language in section 6417(d)(4). Thus, these final regulations do not adopt comments that suggested revisions to the rules in proposed § 1.6417–2(e), but make clarifications in the examples that illustrate the application of those rules.

5. Partnership Elections

Proposed § 1.6417–4(c) would provide rules for a partnership or S corporation that makes an election under section 6417(a) and proposed § 1.6417–2(b) in accordance with the special rules for partnerships and S corporation under section 6417(c)(1)(A) through (D). One commenter opined that the proposed regulations seem to allow a corporation making an elective payment election for section 45X credits determined during the year to reduce quarterly estimated taxes by including credits in its general business credit computation up to the section 38(c) limitation. However, the commenter thought this was not the case for section 45X credits earned through a partnership, as the election and payment are made at the partnership level. The commenter thought that, in the absence of quarterly elections and payments, the final regulations should provide a mechanism for corporate partners to reduce quarterly estimated taxes for applicable credits determined with respect to applicable credit property held through partnerships that will make elective payment elections; otherwise, the commenter thought it would be penalizing taxpayers that operate their businesses through partnerships, for example, as joint ventures.

The Treasury Department and the IRS note that the treatment of partners of a partnership (or shareholders of an S corporation) is different from the treatment of an applicable entity or electing taxpayer directly making the elective payment election. This is a result of the special rules for partnerships in section 6417(c)(1) that require an elective payment election for applicable credits determined with respect to any applicable credit property held directly by a partnership to be made by the partnership. An elective payment election made by a partnership is not reduced by the Federal tax liabilities of its partners. Instead, it is only reduced by any partnership level Federal tax liability. If partners were allowed to reduce their quarterly estimated taxes for applicable credits determined with respect to applicable credit property held by a partnership for which the partnership makes an elective payment election, then the amount of the elective payment made to the partnership should be reduced by the partners' corresponding quarterly estimated tax liabilities. Otherwise, the partners would receive a windfall because the same applicable credits would be used to both reduce the partners' estimated tax payments and generate an elective payment to the partnership. Section 6417(c)(1) does not allow for such a mechanism. Instead, section 6417(c)(1)(C) provides that, if a partnership makes an elective payment election, any elective payment amount is treated as tax exempt income for purposes of section 705 and a partner's distributive share of such tax exempt income is equal to such partner's distributive share of the otherwise applicable credit for each taxable year as determined under § 1.704–1(b)(4)(ii). As the elective payment election results in an applicable credit being treated as tax exempt income rather than as a credit, it is inappropriate to adopt a rule allowing the partners to treat the same amount as a credit for estimated tax purposes. Thus, these final regulations do not adopt the commenter's recommendation of a rule allowing corporate (or any other) partners to reduce quarterly estimated taxes for applicable credits determined with respect to applicable credit property held through partnerships that make elective payment elections.

6. Appeal and Litigation Rights

Several commenters asked whether the procedural guidelines outlined in subtitle F of the Code are applicable to elective payment elections in scenarios involving an audit or rejection by the IRS. These commenters opined that, because section 6417 treats an elective payment election as akin to an income tax payment, the procedures outlined in subtitle F of the Code should apply, and further, that the overpayment interest provisions of sections 6611 and 6621 should apply based on the payment dates described in section 6417(d)(4)(B)

and in the proposed regulations. The Treasury Department and the IRS note that section 6417 is located in chapter 65 of the Code, which relates to Abatements, Credits, and Refunds, which is in turn located under subtitle F of the Code. Accordingly, subtitle F of the Code, which include provisions relating to overpayment interest, applies to elective payment elections under section 6417.

Commenters requested that the final regulations confirm an applicable entity or electing taxpayer's right to appeal an adverse determination by the IRS with respect to a determination regarding an elective payment election, and that deficiency procedures (including the right to petition the U.S. Tax Court) are applicable. An applicable entity or electing taxpayer may challenge an adverse determination by the IRS with respect to an elective payment election if the denial of such election creates a tax deficiency, for which deficiency procedures apply, including the right to petition the U.S. Tax Court. For example, if an applicable entity or electing taxpayer claimed an elective payment amount for applicable credits that were subsequently disallowed by the IRS, then the applicable entity or electing taxpayer could protest the disallowance before the IRS Independent Office of Appeals (Appeals) and ultimately petition the U.S. Tax Court, if desired or appropriate.

Another commenter suggested that the IRS should be required to share with the taxpayer the reasons why the IRS has denied a credit. The Treasury Department and the IRS intend for disallowances of an applicable credit under section 6417 to function the same as disallowances by the IRS for other credits or deductions. In such situations, a taxpayer will be provided the basis for the disallowance. Accordingly, this comment is not adopted.

One commenter stated that the proposed regulations designated the elective payment election as a ''special enforcement matter'' for purposes of the centralized partnership audit regime [9] pursuant to section 6241(11) of the Code but provided no information about what audit rules apply in lieu of those partnership audit rules or why special enforcement is required to make an elective payment election. Under section 6241(11), in the case of partnership-related items involving special enforcement matters, the Secretary may prescribe regulations providing that the centralized partnership audit regime (or any portion thereof) does not apply to such items and that such items are subject to special rules as the Secretary determines to be necessary for the effective and efficient enforcement of the Code. The Treasury Department and the IRS have determined that applying the special enforcement rules to the elective pay election is appropriate in order to prevent payments for invalid credits and avoid the need for audits at that stage. The IRS uses the special enforcement rule to make an adjustment upon the determination of an ineffective election instead of following the audit procedures of the centralized partnership audit regime. This special enforcement rule only applies to adjustments to the elective payment election and payment; any other adjustments that may be required later in time remain subject to the centralized partnership audit regime.

Another commenter stated that it would be helpful to specify what, if any, audit process would apply to tax-exempt or governmental entities that do not normally file tax returns or pay taxes. This commenter stated that the pre-registration certification process will go a long way toward preventing fraud associated with these projects and thus recommended that the Treasury Department and the IRS identify a category of smaller projects that could be excluded from, or subjected to, a simplified audit process. The Treasury Department and the IRS expect that tax-exempt or governmental entities that do not ordinarily file tax returns or pay tax would be subject to the same examination process and procedures as other entities that have historically had a filing obligation. Any changes to such procedures, including a simplified audit process, are outside the scope of these final regulations, but may be considered in future guidance.

III. Elective Payment Election by Electing Taxpayers

Section 6417(d)(1)(B) through (D) provides that an electing taxpayer (that is, a person other than an applicable entity described in section 6417(d)(1)(A)) that, with respect to any taxable year, places in service applicable credit property that qualifies for a section 45V credit or a section 45Q credit, or, with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced eligible components (as defined in section 45X(c)(1)), respectively, may elect to be treated as an applicable entity for purposes of section 6417 for such taxable year, but only with respect to the aforementioned applicable credit property and only with respect to a section 45V credit, section 45Q credit, or section 45X credit, respectively.

The special rules for electing taxpayers are found in section 6417(d)(1) and (3). Proposed § 1.6417–3 would have combined these rules for clarity, and these final regulations adopt proposed § 1.6417–3 with minor changes noted in this part III of the Summary of Comments and Explanation of Revisions.

Proposed § 1.6417–3(b), (c), and (d) would have provided the specific rules regarding the election under section 6417(d)(1)(B) through (D). Proposed § 1.6417–3(e) would have provided the rules relating to the election for electing taxpayers. As described in part IV of this Summary of Comments and Explanation of Revisions, proposed § 1.6417–4 would have provided additional rules for electing taxpayers that are partnerships or S corporations.

A. Qualified Clean Hydrogen Production Facility (Section 45V)

Proposed § 1.6417–3(b) would have provided that an electing taxpayer that has placed in service a qualified clean hydrogen production facility, as defined in section 45V(c)(3), during the taxable year may make an elective payment election for such taxable year (or by August 16, 2023, in the case of facilities placed in service before December 31, 2022), but only with respect to the qualified clean hydrogen production facility, only with respect to a section 45V credit, and only if the pre-filing registration process required by § 1.6417–5T was properly completed. An electing taxpayer that elects to treat qualified property that is part of a specified clean hydrogen production facility as energy property under section 48(a)(15) would not be able to make an elective payment election with respect to such facility. No commenter addressed this provision, and these final regulations adopt it without change.

B. Carbon Oxide Sequestration (Section 45Q)

Proposed § 1.6417–3(c) would have provided that an electing taxpayer that has, after December 31, 2022, placed in service a single process train described in § 1.45Q–2(c)(3) at a qualified facility (as defined in section 45Q(d)) during the taxable year may make an elective payment election for such taxable year, but only with respect to the single process train, only with respect to a section 45Q credit, and only if the pre-filing registration process required by § 1.6417–5T was properly completed.

[9] Subchapter C of chapter 63 of the Code as amended by the Bipartisan Budget Act of 2015 (BBA).

One commenter asked about registering multiple process trains that are part of a single facility under section 45Q. The IRS will consider ways outside of these final regulations to make the pre-filing registration process more streamlined for entities doing multiple registrations. Therefore, these final regulations adopt this provision without change.

C. Advanced Manufacturing Credit (Section 45X)

Section 6417(d)(1)(D) provides that an electing taxpayer can make an election with respect to any taxable year in which such taxpayer has, after December 31, 2022, produced eligible components (as defined in section 45X(c)(1)), and section 6417(d)(1)(D)(ii)(I) provides that the elective payment election applies to each of the four succeeding taxable years ending before January 1, 2033. Proposed § 1.6417–2(a)(3)(v) and –3(d) would have clarified that an electing taxpayer that produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) at an applicable credit property described in § 1.6417–1(e)(7) (in other words, a facility that produces eligible components, as described in guidance under sections 48C and 45X) during the taxable year (whether the facility existed on or before, or after, December 31, 2022) may make an elective payment election for such taxable year, but only with respect to the facility at which the eligible components are produced by the electing taxpayer in that year, only with respect to a section 45X credit, and only if the pre-filing registration process required by § 1.6417–5T was properly completed.

Commenters asked for clarifications regarding section 45X facilities (such as how to designate different parts as different facilities). These comments are outside the scope of these final regulations; thus, these final regulations adopt this provision without change.

D. Electing Taxpayer Making an Elective Payment Election

Proposed § 1.6417–3(e) would have provided rules on how the electing taxpayer makes the elective payment election, as further described in this section.

1. In General

Proposed § 1.6417–3(e)(1) would have provided that, if an electing taxpayer makes an elective payment election under proposed § 1.6417–2(b) with respect to any taxable year in which the electing taxpayer places in service a qualified clean hydrogen production facility for which a section 45V credit is determined, places in service a single process train at a qualified facility for which a section 45Q credit is determined, or produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) at a facility, respectively, the electing taxpayer will be treated as an applicable entity for purposes of making an elective payment election for such taxable year and during the election period described in proposed § 1.6417–3(e)(3), but only with respect to the applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7), respectively, that is the subject of the election. The taxpayer would be required to otherwise meet all requirements to earn the credit in the electing year and in each succeeding year during the election period described in proposed § 1.6417–3(e)(3).

No commenter addressed this rule, and these final regulations adopt this provision without change.

2. Election Is per Applicable Credit Property

Proposed § 1.6417–3(e)(2) would have provided that the election must be made separately for each applicable credit property, which is, respectively, a qualified clean hydrogen production facility placed in service for which a section 45V credit is determined, a single process train placed in service at a qualified facility for which a section 45Q credit is determined, or a facility in which eligible components are produced for which a section 45X credit is determined. An electing taxpayer may only make one election with respect to any specific applicable credit property.

A few commenters requested that the final regulations clarify whether it is possible to make a second 5-year elective payment election for the same applicable credit property, opining that section 6417 does not preclude a second 5-year election and that the language in proposed § 1.6417–2(b)(4)(iii) is ambiguous. The Treasury Department and the IRS have determined that it is more consistent with the statute to allow only one election per specific applicable credit property; thus, these final regulations continue to unambiguously provide that it is not possible to make an elective payment election for the same applicable credit property for a second 5-year period and § 1.6417–2(b)(4)(iii) is adopted without change.

One commenter asked whether a change in ownership during the 5-year period would continue the 5-year period. Although the comment was unclear, presumably, the commenter preferred the 5-year period to continue rather than beginning a new 5-year period or ending the old 5-year period. The Treasury Department and the IRS note that proposed § 1.6417–5(c)(4) would have provided that, if a facility previously registered for an elective payment election undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner would be required to amend the original registration to disassociate its EIN from the credit property and the new owner would be required to submit an original registration (or if the new owner previously registered other credit properties, must amend its original registration) to associate the new owner's EIN with the previously registered credit property. This provision was intended to provide that the previous 5-year period would continue despite the change in ownership. This is because it would be inappropriate to start a new 5-year period with respect to the same applicable credit property, while at the same time undesirable to cut short a 5-year period that had not yet ended. These final regulations add a sentence to clarify this point.

3. Election Period

i. In General

Pursuant to section 6417(d)(1)(D)(ii)(I), (d)(3)(C)(i)(II)(aa), and (d)(3)(D)(i)(III)(aa), proposed § 1.6417–3(e)(3)(i) would have provided that the elective payment election generally would apply for an election period consisting of the taxable year in which the election is made and each of the four succeeding taxable years that end before January 1, 2033. Proposed § 1.6417–3(e)(3)(i) also would have provided that the election period cannot be less than a taxable year but may be made for a taxable period of less than 12 months within the meaning of section 443 of the Code.

Several commenters thought the five-year period should start on the date equipment is placed in service and run for 60 months; for example, using an ''annualization principle.'' Commenters stated that, unless the qualified facility or carbon capture equipment is placed in service on the first day of an electing taxpayer's taxable year, the elective payment amount would not be commensurate with the credit that would be otherwise allowable under section 45Q(a)(3) and (4). Commenters stated that this could incentivize

taxpayers to delay placing projects in service until the first day of the following taxable year so as to make an elective payment election for the amount of applicable credit allowed for a full year, but that incentivizing such a delay is counterintuitive and seems misaligned with the original intent for permitting elective payment elections.

The Treasury Department and the IRS agree that such a result may seem counterintuitive but note that any other rule would be inconsistent with the statute. For section 45V credits, the elective payment election is made for the taxable year the equipment or facility is placed in service (or by August 16, 2023, in the case of facilities placed in service before December 31, 2022) and the four succeeding taxable years with respect to such facility which end before January 1, 2033.[10] For section 45Q credits, the elective payment election is made for the taxable year in which such taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility (as defined in section 45Q(d)), and the four subsequent taxable years with respect to such equipment which end before January 1, 2033.[11] Because the statute is unambiguous with respect to which taxable years qualify for the election after an applicable credit property is placed in service, these final regulations adopt proposed § 1.6417–3(e)(3)(i) without change.

One commenter suggested that a taxpayer should be able to file a short year tax return ending on the 60th month so that the taxpayer can make a transfer election under section 6418 for the remainder of the taxpayer's taxable year following the 60th month. The Treasury Department and the IRS note that the rules for short year tax returns are found in section 443 and the regulations thereunder. Among other things, adopting a short year if the taxpayer is still in existence would require approval by the IRS. Because the rules for short year returns are outside the scope of these final regulations, these final regulations do not adopt a special rule in response to the comment.

ii. Revocation

Proposed § 1.6417–3(e)(3)(ii) would have provided that an electing taxpayer may, during a subsequent year of the election period, revoke the elective payment election with respect to an applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7) in accordance with forms and instructions. Any such revocation, if made, applies to the taxable year in which the revocation is made (which cannot be less than a taxable year but may be made for a taxable period of less than 12 months within the meaning of section 443 of the Code) and each subsequent taxable year within the election period. Any such revocation may not be subsequently revoked.

One commenter requested clarification that an elective payment election remains in effect even if an electing taxpayer does not make an election in a particular year, as long as the taxpayer does not affirmatively revoke the election. As a clarification, unless otherwise provided in forms and instructions, the act of not making an elective payment election during the election period is not itself a revocation of the election. Thus, for example, if an electing taxpayer makes an elective payment election in years 1 and 2 but fails to make the election in year 3, then the electing taxpayer is still eligible to make the election in years 4 and 5 if the electing taxpayer so desires. However, the Treasury Department and the IRS note that, as described in part III.4 of this Summary of Comments and Explanation of Revisions, the electing taxpayer is ineligible to make a transfer election under section 6418 while the section 6417 election period is still in effect.

4. No Transfer Election Under Section 6418(a) Permitted While an Elective Payment Election Is in Effect

Pursuant to section 6417(d)(1)(D)(iii) (section 45X credit), (d)(3)(C)(ii) (section 45Q credit), and (d)(3)(D)(ii) (section 45V credit), proposed § 1.6417–3(e)(4) would have provided that an electing taxpayer could not make a transfer election under section 6418(a) with respect to any applicable credit under proposed § 1.6417–1(d)(3), (5), or (7) determined with respect to applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7) during the election period for that applicable credit property. However, if the election period is no longer in effect with respect to an applicable credit property, any credit determined with respect to such applicable credit property could be transferred pursuant to a transfer election under section 6418(a), as long as the taxpayer meets the requirements of section 6418 and the section 6418 regulations.

One commenter requested that the final regulations clarify that electing taxpayers described in section 6417(d)(1)(B) may make a section 6417 elective payment election for up to five years and then make a section 6418 transfer election for the remainder of the 12-year credit period provided for under section 45Q. The Treasury Department and the IRS agree that this is permitted as long as the electing taxpayer complies with the requirements of sections 45Q, 6417, and 6418, and the respective regulations thereunder, but concluded that no clarification in these final regulations is necessary.

This commenter also requested clarification that electing taxpayers may forgo the elective payment election under section 6417 altogether and elect to transfer credits under section 6418 for the entire 12-year credit period provided for under section 45Q. The Treasury Department and the IRS agree that an electing taxpayer that does not elect to be treated as an applicable entity with respect to applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7), respectively, is not subject to the rules of section 6417, and may make a section 6418 election for a credit determined with respect to the electing taxpayer under section 45Q, 45V, or 45X as long as the taxpayer meets the requirements of those sections and the respective regulations thereunder.

IV. Elective Payment Election for Partnerships and S Corporations

Section 6417(c)(1) provides that, in the case of any applicable credit determined with respect to any applicable credit property held directly by a partnership or S corporation, any election under section 6417(a) is made by such partnership or S corporation. Section 6417(c)(1)(A) through (D) describes the treatment of an elective payment election made by a partnership or S corporation, and proposed § 1.6417–4 would have provided additional rules for electing taxpayers that are partnerships or S corporations.

Proposed § 1.6417–4(a) would have provided that, if an applicable credit is determined with respect to applicable credit property owned by a partnership or S corporation, the elective payment election must be made by the partnership or S corporation. Proposed § 1.6417–4(b) would have provided that, if an elective payment election is made with respect to applicable credit property pursuant to section 45Q, 45V, or 45X, such partnership or S corporation would be treated as an applicable entity for purposes of making such elective payment election. Proposed § 1.6417–4(c)(1) would have provided that, if such partnership or S corporation makes an elective payment election: (1) the IRS will make a payment to such partnership or S

[10] *See* section 6417(d)(1)(B), 6417(d)(3)(D)(i)(II), and 6417(d)(3)(D)(i)(III)(aa).

[11] *See* section 6417(d)(1)(C) and 6417(d)(3)(C)(i)(II)(aa).

corporation in the amount of the credit determined; (2) before determining a partner's distributive share or shareholder's pro rata share of any applicable credit, the applicable credit is reduced to zero; (3) any amount received with respect to such elective payment election is treated as tax exempt income; (4) a partner's distributive share of such tax-exempt income is equal to such partner's distributive share of the otherwise applicable credit; and (5) such tax exempt income is treated as received or accrued, including for purposes of sections 705 and 1366, as of the date the applicable credit is determined. Proposed § 1.6417–4(c)(2) would have provided that if a partnership (upper-tier partnership) receives from a lower tier partnership an allocation of tax exempt income pursuant to section 6417, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to the partners' distributive shares of the otherwise applicable credit. Proposed § 1.6417–4(c)(3) would have provided that such tax exempt income is treated as arising from an investment activity rather than the conduct of a trade or business and is therefore not treated as income from a passive activity under section 469. Proposed § 1.6417–4(d) would have provided that a partnership or S corporation must compute the amount of the applicable credit allowable as if an elective payment election were not made and without regard to the limitations in sections 38(b) and (c) and 469 because those provisions apply at the partner or S corporation shareholder level. Additionally, because the only applicable credits with respect to which a partnership or S corporation may make an elective payment election are not investment credits under section 46, proposed § 1.6417–4(d) would have provided that sections 49 and 50 do not apply to limit the amount of the applicable credits. Because there were no comments related to the provisions described in this paragraph, the proposed regulations are adopted without change in these final regulations.

In connection with the implementation of section 6417, the proposed regulations would have added a sentence to § 301.6241–1(a)(6)(iii) (regarding items or amounts with respect to a BBA Partnership) to provide that any chapter 1 tax that is the liability of the BBA Partnership is an item with respect to the BBA Partnership, regardless of whether that chapter 1 tax is required to be reflected or shown on the partnership return or required to be maintained in the BBA Partnership's books and records. The Treasury Department and the IRS did not receive any comments related to this change under § 301.6241–1; consequently, the proposed rule is adopted without change in these final regulations.

V. Pre-Filing Registration Requirements

Section 6417(d)(5) provides that as a condition of, and prior to, any amount being treated as a payment that is made by the taxpayer under section 6417(a) or any payment being made pursuant to section 6417(c), the Secretary may require such information or registration as the Secretary deems necessary or appropriate for purposes of preventing duplication, fraud, improper payments, or excessive payments. Proposed § 1.6417–5 would have addressed these requirements by adding a pre-filing registration process, and § 1.6417–5T (TD 9975), issued contemporaneously, put those rules into effect for taxable years ending on or after June 21, 2023. Because these final regulations obsolete the temporary regulations, this part V discusses the proposed regulations rather than the temporary regulations, which are identical in content.

Proposed § 1.6417–5(a)–(d) would have provided the mandatory pre-filing registration process that, except as provided in guidance, an applicable entity or electing taxpayer would be required to complete as a condition of, and prior to (1) any amount being treated as a payment against the tax imposed by subtitle A that is made by an applicable entity or electing taxpayer (other than a partnership or S corporation) under proposed § 1.6417–2(a)(1)(i) or (a)(2)(i); or (2) any amount being paid to a partnership or S corporation pursuant to proposed § 1.6417–2(a)(2)(ii).

Proposed § 1.6417–5(a) would have provided an overview of the pre-filing registration process. Proposed § 1.6417–5(b) would have included the pre-filing registration requirements, including: (1) manner of pre-filing registration; (2) pre-filing registration and election for members of a consolidated group; (3) timing of pre-filing registration; (4) that each applicable credit property must have its own registration number; and (5) information required to complete the pre-filing registration process. Proposed § 1.6417–5(c) would have provided rules related to the registration number, including: (1) general rules; (2) that the registration number is valid for only one taxable year; (3) renewing registration numbers; (4) amendment of previously submitted registration information if a change occurs before the registration number is used; and (5) that the registration number is required to be reported on the return for the taxable year of the elective payment election. Proposed § 1.6417–5(d) would have provided that the section applies to taxable years ending on or after date of publication of the final rule.

Some commenters stated the proposed rules related to pre-filing registration were too cumbersome. For example, commenters noted that local governments have significantly limited resources and may, in some cases, require robust technical assistance or otherwise abandon these projects altogether. One suggestion was to create a streamlined pre-filing registration process for projects that are less complex. Another was that the IRS establish a minimum credit threshold to relieve some applicants who are planning to claim lower credit amounts from the pre-filing registration requirements.

The Treasury Department and the IRS understand commenters' concerns about the need for resources to complete the pre-filing registration process; however, pre-filing registration is necessary to help meet the government's compelling interest to prevent fraud and duplication while also allowing for a more efficient processing and payment upon filing of the return. The information requested is also information that an applicable entity should have available after having engaged in an activity for which an applicable credit is determined. Further, for entities engaging in fewer projects, the pre-filing registration process will be less complex. For example, an applicable entity with one applicable credit property for which an applicable credit is determined during the taxable year will have a more streamlined registration process than will an applicable entity with multiple applicable credit properties for which multiple applicable credits are determined during the taxable year. Finally, the IRS is committed to ongoing efforts to provide guidance to help applicable entities understand how to qualify for the underlying credits, the pre-filing registration requirements, and the elective payment election process, and these efforts should address the commenters' concerns. Thus, the Treasury Department and the IRS have concluded that these final regulations should adopt the pre-filing registration process as proposed.

Multiple commenters asked how long the pre-filing registration process is expected to take and what a taxpayer should do if the IRS does not timely issue a registration number. Because the

timeframe and procedures of the pre-filing registration process may be modified over time as both the IRS and taxpayers gain experience with it, these final regulations do not contain any such timeframe or procedure. Instead, the Treasury Department and the IRS recommend that taxpayers with these sorts of questions consult the current version of Publication 5884, *Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide and Instructions,* for the latest guidance on the pre-filing registration process. As of February 2024, Publication 5884 states:

> Even though registration is not possible prior to the beginning of the tax year in which the credit will be earned, the IRS recommends that taxpayers register as soon as reasonably practicable during the tax year. The current recommendation is to submit the pre-filing registration at least 120 days prior to when the organization or entity plans to file its tax return. This should allow time for IRS review, and for the taxpayer to respond, if the IRS requires additional information before issuing the registration numbers.

One commenter recommended a safe harbor if the pre-filing registration was completed by the registrant within a certain time period prior to filing. These final regulations do not adopt this suggestion because the timing of the submission is only one factor; the quality and accuracy of information of the provided information is also a factor. Further, as the IRS and taxpayers gain experience with the pre-filing registration portal, the timing of processing submissions may change, making any proposed safe harbor period obsolete.

One commenter recommended that the final regulations provide that an election could be made prior to receiving a registration number if the applicable entity or electing taxpayer completed the pre-filing registration process but had not yet received a registration number, suggesting that an amended return could be filed upon receipt of the registration number. These final regulations continue to provide that an applicable entity or electing taxpayer that does not obtain a registration number or report the registration number on its annual tax return with respect to an otherwise applicable credit property is ineligible to receive any elective payment amount with respect to the amount of any credit determined with respect to that applicable credit property. Publication 5884 states that the IRS will work to issue a registration number even if the registration submission is made close in time before the registrant's filing deadline. However, in such cases, the registrant should anticipate that the tax return on which the elective payment or transfer election is made may undergo heightened scrutiny to mitigate the risk of fraud and duplication that pre-filing registration is intended to address before a payment is issued.

The Treasury Department and the IRS also note that an elective payment election can be made on any return filed on or before the due date for filing the tax return (including extensions), that § 1.6417–2(b)(3)(i) contains a special rule providing an automatic paperless six-month extension for entities that are not otherwise able to request an automatic six-month extension, and that these final regulations provide late election relief for certain taxpayers, assuming the taxpayer has not received an extension of time to file a return, the taxpayer's original return is timely filed, and the 9100 relief requirements are met. *See* parts II.B.2 and II.B.4 of this Summary of Comments and Explanation of Revisions.

A few commenters asked about the scope of prefiling registration review and whether taxpayers can appeal any denials of registration numbers. Section 7803(e)(3) of the Code provides that it is the function of Appeals to resolve Federal tax controversies without litigation. Decisions made by the IRS relating to the denial, suspension, or revocation of a registration number are not Federal tax controversies within the meaning of section 7803(e)(3) because registration is too attenuated and separate from any tax liability of the applicable entity or electing taxpayer. Publication 5884 describes the IRS review, and opportunity for taxpayers to respond with additional information, of pre-filing registration submissions. In cases in which a pre-filing registration submission is incomplete, the IRS will attempt to contact the registrant using the information provided to indicate deficiencies with the registration prior to making a determination. However, once the IRS determines that a registration number should not be given, the registrant may not appeal the denial unless the IRS and Appeals agree that such review is available and the IRS provides the time and manner for such review.

A few commenters suggested that pre-filing registration include a ''pre-approval process'' or ''pre-approval certification'' that ensures that applicable entities would be able to make elective payment elections for their projects. A few of these commenters sought the distribution of cash refunds earlier than the filing of a return; for example, when a project is placed in service or when pre-filing registration is complete, perhaps by allowing for third-party attestations or verification of initial pre-filing information. One commenter asked that the process of obtaining a registration number provide as much assurance as possible for applicants that they are indeed eligible for the applicable credit for which they intend to make an elective payment election, opining that the pre-filing registration portal should function as a checklist, so an applicant should have reasonable assurance that it will be eligible for the applicable credits if the information it provides is accurate. This commenter stated that, similar to pre-qualifying for a mortgage loan before purchasing a home, those who receive registration numbers should reasonably be able to expect to receive an elective payment, barring any significant changes in project design or entity status.

The pre-filing registration process is not a guarantee that a project will qualify for an applicable credit for which an elective payment election may be made, as verification of initial pre-filing information cannot be used by the IRS to confirm compliance with the requirements of an underlying credit. Compliance with the underlying credit requirements is reported and verified in additional detail on the annual tax return, and, as those requirements are provided in Code sections outside of section 6417, are largely outside the scope of these final regulations. Further, section 6417(d)(4) provides that the payment is treated as being made by the applicable entity on the later of the due date for the return or the date the return is actually filed, so the statute does not permit the IRS to make any payments earlier than such dates. Thus, these final regulations do not adopt the commenters' suggestions.

One commenter asked that the portal allow users to track where they are in the approval process and allow for a transparent and expedited appeals process if the clean energy project is deemed ineligible for a registration number. While outside the scope of these final regulations, the Treasury Department and the IRS note that the pre-filing registration portal does allow users to track where they are in the approval process. *See* Publication 5884.

Proposed § 1.6417–5(b)(5)(vii)(D) would have required that, to complete the pre-filing registration process, registrants must provide information as to the beginning of construction date and the placed in service date of the applicable credit property. A few commenters requested that entities be able to complete pre-filing registration prior to property being placed in

service, such as for residential or small commercial systems or for Alaska Native villages and other Tribal entities. Another commenter requested that the final regulations require registration more than 60 days before construction starts for prevailing wage and apprenticeship (PWA) purposes. The Treasury Department and the IRS have determined that a registration number should not be given before the applicable credit property is placed in service, which is an important step to ensuring that the applicable credit property qualifies for the applicable credit for which the applicable entity seeks to make an elective payment election. Because a credit must be determined in the taxable year of the elective payment election, maintaining the proposed requirement will ensure that taxpayers are not attempting to make an elective payment election in a year in which a credit is not determined. Further, this information will help the IRS prevent fraud. The Treasury Department and the IRS have also determined that it is not necessary to require registration prior to construction for PWA purposes. Thus, these final regulations adopt proposed § 1.6417–5(b)(5)(vii)(D) without change.

Multiple commenters asked that the final regulations allow the option to group multiple qualified facilities as a ''single project'' that would obtain a single registration number, or that consolidated filings be available for multiple small projects. Commenters asked that the final regulations apply Section 4.04 of Notice 2013–29, 2012–20 I.R.B. 1085, which provides that multiple qualified facilities may be treated as a single project for the ''beginning of construction'' purposes, provided the facilities share certain characteristics, such as common ownership, contiguous location, common PPA, or common permits. A commenter suggested having a ''Master Registration Agreement'' to allow issuing a single registration number as a single master project instead of a ''thousand or more'' registration numbers which would burden the applicable entity as well as the IRS.

The definition of applicable credit property in section 6417 is based on the relevant rules for the underlying applicable credit, and changes to the definition of particular properties under the underlying Code sections is outside the scope of this rulemaking. If such underlying Code section allows grouping to determine a qualified property, then grouping for purposes of a registration number is permitted. If such definition does not allow grouping, then each applicable credit property must be registered separately; however, for some applicable credits, the pre-filing registration portal allows applicable credit property information to be uploaded by way of a spreadsheet file (bulk upload). *See* Publication 5884.

One commenter asked that the text of § 1.6417–5 be amended to specifically include the words ''restricted tax exempt amounts.'' These final regulations do not adopt this suggestion because the term ''the source of funds the taxpayer used to acquire the property'' found in § 1.6417–5 includes restricted tax exempt amounts (as described in Section II.C.3 of this Summary of Comments and Explanation of Revisions) and may also include information about other sources of funding that the IRS has determined is necessary for tax administration.

One commenter asked that applicable entities and electing taxpayers be required to state during pre-filing registration whether they intend to qualify for the prevailing wage and apprenticeship bonus amount. These final regulations do not adopt this comment because the pre-filing registration process is primarily intended to verify that the applicant is an applicable entity and that the registered property is an applicable credit property. Calculation of the credit amount (including qualifying for any bonus amounts that would increase the base credit amount) is done on the annual return. However, the Treasury Department and the IRS will monitor the pre-filing registration process to determine whether requesting additional information is needed to prevent duplication, fraud, improper payments, or excessive payments under section 6417.

One commenter asked that the final regulations allow an applicable entity to use a certificate, permit, or evidence of ownership, rather than all three, during pre-filing registration, especially since applicable entities are required to maintain books and records supporting the underlying credit. Proposed § 1.6417–5(b)(5)(vii)(C) would have required an applicable entity or electing taxpayer to provide information related to applicable credit properties, including ''any'' supporting documentation relating to the construction or acquisition of the applicable credit property. The Treasury Department and the IRS did not intend for proposed § 1.6417–5(b)(5)(vii)(C) to require all supporting documentation to be provided during the pre-filing registration process. Rather, the intent was to require information sufficient to verify the applicable credit property. In response to the comment, these final regulations remove the word ''any'' from the provision so that it now reads ''[s]upporting documentation relating to the construction or acquisition of the applicable credit property . . .''

The documentation to support the existence of valid applicable credit property will vary by the credit being claimed. The pre-filing registration portal and Publication 5884 list, for each credit, a description of the types of documents that will facilitate processing of the pre-filing registration. A registrant does not need to provide all information that may be available; in fact, in February 2024, Publication 5884 states:

> If detailed project plans or contractual agreements are the best support that the taxpayer is engaging in activities or making tax credit investments that qualify the registrant to claim a credit, the registrant should submit an extract of the document showing the name of the taxpayer, date of purchase and identifying information such as serial numbers, rather than the entire document.

However, to the extent the information provided is insufficient for purposes of the pre-filing registration process, the IRS may request further information. *See* Publication 5884.

One commenter recommended that the Treasury Department and the IRS consider authorizing users to renew their registrations on an annual basis rather than submit entirely new registrations each year. Several commenters stated that renewal of registration numbers should not be required because an annual renewal is a significant burden on taxpayers and may disincentivize taxpayers from undertaking a production tax credit project. A few commenters stated that renewal should not be required if the project is extended or delayed from going into operation or if there is no change in the relevant facts with respect to the facility, and one of these commenters requested that registration numbers be valid for multiple years for public projects that are more likely to be delayed. Several commenters suggested that, if no factual information required for the pre-filing registration process has changed, then the registration portal should provide an expedited or streamlined process such as a ''short form.''

Proposed § 1.6417–5(c)(3) provided, and these final regulations also state, that a renewal must be made ''in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.'' Thus, any changes to the pre-filing registration process to make it be more streamlined for renewals will be addressed in

applicable guidance. Further, a registration number is not provided until an applicable credit property is placed in service; therefore, project delays should be irrelevant to the pre-filing registration process.

A commenter asked whether two unrelated taxpayers who own separate applicable credit properties (for example, a single process train under section 45Q and a qualified facility as defined in section 45Z(d)(4)), could each complete the preregistration process so long as such taxpayers ultimately make an elective payment election or a transfer election under section 6418 in accordance with the qualification rules. The commenter added it did not expect that both taxpayers would be able to claim their respective tax credits in the same taxable year. The commenter seems to misunderstand that pre-filing registration and elective payment elections are made on the basis of individual applicable credit properties, so to the extent there are two applicable credit properties, separate registration numbers are required. A registration number can only be obtained by the entity who owns the underlying applicable credit property and conducts the activities giving rise to the credit or, in the case of section 45X (under which ownership of applicable credit property is not required), be considered (under the section 45X regulations) the taxpayer with respect to which the section 45X credit is determined. Further, a registration number is valid only for the taxable year for which it is obtained.

A few commenters recommended that tax professionals be allowed to apply for registration numbers for their clients. The Treasury Department and the IRS note that the proposed regulations would not have restricted a taxpayer from authorizing a representative to apply for a registration number on behalf of the taxpayer, and these final regulations similarly do not do so. *See* Publication 5884, which provides that a person who wishes to access Energy Credits Online on behalf of a taxpayer must authorize an IRS Energy Credits Online account by selecting ''Start Authorization.'' These final regulations modify § 1.6417–5(c)(5) to clarify that a valid registration number is one that was assigned to the particular taxpayer during the pre-registration process.

A commenter requested clarification that persons completing pre-filing registration documentation on behalf of applicable entities do not, by virtue of such activity, become ''tax return preparers.'' The determination of whether a person is a tax return preparer, as defined under section 7701(a)(36), is based on facts and circumstances that are outside of the scope of these final regulations.

VI. Special Rules

Section 6417(d)(6) provides rules relating to excessive payment, and section 6417(g) provides rules relating to basis reduction and recapture. Proposed § 1.6417–6 would have implemented these provisions.

A. Excessive Payments

Pursuant to section 6417(d)(6), proposed § 1.6417–6(a) would have provided that the IRS may determine that an amount treated as a payment made by an applicable entity under proposed § 1.6417–2(a)(1)(i) or an electing taxpayer under proposed § 1.6417–2(a)(2)(i), or the amount of the payment made to a partnership electing taxpayer pursuant to proposed § 1.6417–2(a)(2)(ii), constitutes an excessive payment. Proposed § 1.6417–6(a) would have provided that, in the case of an excessive payment determined by the IRS, the amount of chapter 1 tax imposed on the applicable entity or electing taxpayer for the taxable year in which the excessive payment determination is made is increased by an amount equal to the sum of (1) the amount of such excessive payment, plus (2) an amount equal to 20 percent of such excessive payment (additional 20 percent tax). This would be the case even if the applicable entity or electing taxpayer is otherwise not subject to chapter 1 tax. If the additional 20 percent tax is applicable, it would apply in addition to any penalties, additions to tax, or other amounts applicable under the Code. The additional 20 percent tax amount would not apply if the applicable entity or electing taxpayer demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. The preamble to the proposed regulations stated that the Treasury Department and the IRS anticipated that existing standards of reasonable cause would inform the determination by the IRS of whether reasonable cause has been demonstrated for this purpose.

Proposed § 1.6417–6(a)(3) would have defined ''excessive payment'' as an amount equal to the excess of (1) the amount treated as a payment under proposed § 1.6417–2(a)(1)(i) or proposed § 1.6417–2(a)(2)(i), or the amount of the payment made pursuant to proposed § 1.6417–2(a)(2)(ii), with respect to such facility or property for such taxable year, over (2) the amount of the credit that, without application of section 6417, would be otherwise allowable (as described in parts II.C and II. D. or part IV of this Summary of Comments and Explanation of Revisions and without regard to section 38(c)) under the Code with respect to such facility or property for such taxable year.

Commenters asked for ''regulatory relief'' from the excessive payment rules, and whether appeals rights, deficiency procedures, and the right to petition the Tax Court apply to excessive payment determinations by the IRS. Any excessive payment determination will be made by the IRS under established examination procedures and these final regulations do not except any taxpayers or any calculations from this process.

Several commenters sought clarification of the definition and application of reasonable cause, including requesting additional factors or examples (such as the absence of fraud, reliance on a project labor agreement, excessive payments that stem from labor standards noncompliance, or the misallocation of general versus earmarked funding). Multiple commenters asked that reasonable cause be interpreted broadly to include a taxpayer's ''reasonable effort'' or ''good faith.'' Another commenter recommended the final regulations include a rebuttable presumption that applicable entities have reasonable cause because they lack internal resources, tax expertise, and experience in the initial period of elective payment implementation. Commenters also asked for guidance on reasonable cause and the PWA bonus amount. The Treasury Department and the IRS recognize that taxpayers operating under certain tax rules for the first time will desire certainty. However, reasonable cause standards are already well-established under case law and administrative and regulatory authorities. For example, a taxpayer that receives an excessive payment may assert defenses that are commonly raised by taxpayers in other situations in which the IRS has asserted an addition to tax. Section 1.6664–4, for example, provides guidance related to reasonable cause in the context of accuracy-related penalties under section 6662. Comments regarding reasonable cause standards as they relate to specific provisions concerning increased credit or deduction amounts available for taxpayers satisfying PWA requirements are outside the scope of these final regulations. Thus, these final regulations continue to provide that existing standards and authorities for determining reasonable cause apply for purposes of the additional 20 percent tax amount, and do not adopt

commenters' suggestions to create new, special rules for certain types of entities or for purposes of section 6417.

As described in part II.C.2 of this Summary of Comments and Explanation of Revisions, commenters requested that the final regulations clarify whether a taxpayer could amend its return to adjust the elective payment amount and avoid incurring the excessive payment addition to tax. These final regulations clarify that, if an applicable entity or electing taxpayer amends its tax return or files an AAR before the IRS opens an examination, and the amended return or AAR adjusts the elective payment amount to the amount properly determined with respect to the applicable entity or electing taxpayer, then the excessive payment provisions of section 6417(d)(6) and § 1.6417–6(a) would not apply.

B. Basis Reduction and Recapture

Section 6417(g) provides basis reduction and recapture rules. It states that, except as otherwise provided in section 6417(d)(2)(A), rules similar to the rules of section 50 apply for purposes of section 6417. (Section 6417(g) erroneously refers to section 6417(c)(2)(A), a provision that does not exist, and it is evident that such reference was intended to be to section 6417(d)(2)(A). That error is accounted for in these final regulations.) Proposed § 1.6417–6(b) would have provided these rules.

One commenter addressed basis reduction, requesting that the basis reduction under section 50(c)(3) not apply to a taxable electric cooperative that is an applicable entity under the statute. The commenter stated that electric cooperatives seldom dispose of or sell any significant assets; instead, they typically retire the assets once they are no longer used and useful in providing electric service. The commenter also stated that taxable electric cooperatives typically have little to no tax liability and utilize longer straight-line methods of tax depreciation; as a result, there is no increase in tax that may result from reduced depreciation deductions.

The Treasury Department and the IRS note that most applicable entities listed in section 6417(d)(1)(A) have little or no tax liability and have concluded that, as section 6417(g) states that rules ''similar to'' the rules of section 50 apply for purposes of section 6417 and there does not appear to be any valid reason to treat a taxable rural electric cooperative differently from other applicable entities with respect to this rule, these final regulations should not adopt this suggestion.

A commenter asked that the final regulations include an exception to the recapture rules for certain sales by applicable entities, for example, a sale to a party that would (1) be a more suitable operator and (2) be able to monetize tax depreciation (unlike applicable entities in most circumstances). The Treasury Department and the IRS have determined that allowing such exceptions would be too far of a departure from the general rules of section 50, as section 6417(g) provides that rules similar to section 50 apply. Section 50(a) provides that if, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period (which is five years after the property is placed in service), then the tax under chapter 1 for such taxable year is increased by the recapture percentage. To provide an exception for sales to a party that the seller determines to be a more suitable operator, or because the buyer would be able to take a depreciation deduction, would severely limit the application and congressional purpose of section 50. Thus, these final regulations do not adopt this comment.

VII. Comments That Are Outside the Scope of These Final Regulations

Several commenters noted typos or corrections to the proposed regulations, which were generally corrected in these final regulations. In addition, several categories of comments were outside the scope of these final regulations but are generally summarized below.

A. Requests To Streamline or Simplify the Process

In addition to general requests to streamline the pre-filing registration process, a few commenters asked that the IRS prioritize support for low-income and disadvantaged communities, and several commenters requested that their particular entity be eligible for a simplified process. One commenter requested that the final regulations eliminate the tax return requirement for governmental entities that do not have a Federal tax obligation, and another commenter requested a ''waiver process.'' The Treasury Department and the IRS acknowledge the potential for complexity for applicable entities and electing taxpayers seeking to make elective payment elections, especially for taxpayers who have not historically had a return-filing obligation, and have sought to balance taxpayer compliance burdens with the need to ensure payments are being correctly made to applicable entities and electing taxpayers. The proposed regulations specifically requested comments on methods to reduce paperwork burden or burdens on small entities. While these final regulations do not adopt comments recommending a streamlined process for certain taxpayers, including comments suggesting the removal of a return-filing requirement, the Treasury Department and the IRS will continue to monitor the elective payment process to determine whether there are areas in which more efficiencies can be created.

B. Requests for Plain Language Guidance or Other Assistance

Multiple commenters asked for additional help in accessing applicable credits, including developing and delivering a far-reaching awareness campaign; providing a webinar or workshop to provide clear guidance and clarification to some of the issues raised; providing IRS staff to answer questions via email, telephone, or in-person outreach or via a taxpayer customer service portal and ensuring this support is culturally appropriate and language-accessible; publishing straightforward materials (for example, a checklist of necessary steps) to claim credits; publishing templates, filing manuals, sample forms, and documentation examples; providing clear examples of timelines, including for entities with different tax filing years; providing regular updates on when these credits will expire; testing approaches with early potential users and using feedback to adjust as necessary; collaborating with other agencies; leveraging community partnerships; and expanding efforts to proactively consult communities with the greatest barriers to access, among other things.

The Treasury Department and the IRS acknowledge the learning curve many taxpayers will face in registering for and making elective payment elections for applicable credits and intend to provide as much additional assistance as possible to taxpayers. The Treasury Department and the IRS are endeavoring to provide as much plain language guidance as possible to taxpayers to expand access and uptake of applicable credits. As previously discussed, the Treasury Department and the IRS will monitor the pre-filing registration and filing processes and have already embarked on many of these recommendations. For example, as of the publication of these final regulations, the Treasury Department and the IRS have conducted webinars; issued FAQs; published information on

IRS.gov[12] on how taxpayers can complete the pre-filing registration process; and have held ''office hours'' with taxpayers offering assistance with the pre-filing registration process.

One commenter recommended creation of a simple online ''elective payment amount estimator'' tool that would estimate (without guarantees) the elective payment amount and the timing of key actions (for example, when to register and file, when receipt of payment is estimated) that could aid taxpayers considering the making of an elective payment election. Such a tool, according to the commenter, would facilitate bridge financing by assisting, for example, school construction authorities or green banks by estimating future elective payment amounts. It is not possible for the IRS to estimate the elective payment amount at the time of pre-filing because the IRS will not have adequate information, such as eligibility for bonus credit amounts to make such a calculation, but a taxpayer may be able to estimate the amount of credit by completing a draft Form 3800 and any required completed source form(s).

C. Tax Exempt Bonds

The proposed regulations did not contain any rules specifically addressing the use of tax-exempt bond financing. However, multiple commenters had questions about the interplay between tax-exempt bonds and section 6417. These questions generally are outside of the scope of these final regulations because the use of proceeds of tax-exempt bonds under section 103 may impact the amount of a particular applicable credit in the underlying Code sections (such as sections 45 and 48), and such reduction in the credit amount occurs before the application of section 6417 and independently from the application of section 6417.

One commenter requested that the final regulations clarify that the amount received pursuant to an elective payment election is not treated as ''proceeds'' of a tax-exempt bond issue, which would be subject to use and investment limits under the tax-exempt bond rules. This commenter stated that, if the payment were treated as proceeds of a bond issue, the use of tax-exempt bond financing could ruin the economics of the deal. The Treasury Department and the IRS confirm that section 6417(a) provides that the applicable credit is treated as a payment against the tax imposed by subtitle A and, therefore, the amount received as an elective payment is not proceeds of a tax-exempt bond issue.

Multiple commenters addressed the reduction to the section 45 credit required by section 45(b)(3) (section 45(b)(3) credit reduction) for the use of tax-exempt bond proceeds and its interaction with section 6417(a). One commenter requested clarification that the section 45(b)(3) credit reduction is not required if parties use tax-exempt bridge financing for credit property and retire it before the facility is placed in service. One commenter recommended that project owners be granted permission to use the tax-exempt bond allocation rules (that is, the allocation rules for purposes of determining a bond's tax-exempt status) to determine the percentage of tax-exempt bond financing utilized and calculate any reduction necessary if energy credits are utilized. One commenter stated that calculation of the credit reduction percentage should be permitted to occur when the tax-exempt bonds are structured, sold, or issued, because unless additional funds are added to the project, a final allocation of tax-exempt bond proceeds to expenditures under § 1.148–6 should not result in a change in the amounts of tax-exempt bond proceeds and other funds for purposes of calculating the credit reduction percentage. One commenter requested examples for local governments or municipal utilities of how the section 45(b)(3) credit reduction affects elective payment amounts. One commenter requested confirmation that the cost determination necessary to calculate the extent of any section 45(b)(3) credit reduction with respect to a production tax credit facility should be based on criteria and guidance developed in the context of investment tax credits. One commenter stated that the allocation of tax-exempt bond proceeds for purposes of the section 45(b)(3) credit reduction to property that is qualified or non-qualified for a credit within a larger facility that includes both types of property should not impact the application of the bond rules under § 1.141–6 relating to private business use. This commenter also stated there should be no requirement that the allocations under section 45(b)(3) and § 1.141–6 be consistent with regards to floating allocations of sources of funding to uses. One commenter recommended that the final regulations treat tax-exempt bond proceeds as automatically allocated to any portions of the overall facility that are not part of the ''qualified facility'' (as that term is used in section 45(b)(3)).

The rules for the allocation of tax-exempt bond proceeds for purposes of the credit reduction fraction under section 45(b)(3) and § 1.148–6(d) are generally outside the scope of these final regulations. Section 1.148–6(d) provides that an issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. Further, the allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue.

One commenter requested that, if the rules for allocation of tax-exempt bond proceeds to expenditures under § 1.148–6 are applied to credit reduction for tax-exempt bond financing under section 45(b)(3), the final regulations should provide an automatic extension to file a superseding return to reflect changes with regards to tax-exempt financing, or issue other guidance to accommodate this situation. As discussed in part II.B.2 of this Summary of Comments and Explanation of Revisions, these final regulations allow an applicable entity or electing taxpayer that has made an elective payment election on an original return to file a superseding return if permissible, or to amend their return or file an AAR to the extent the amount of the applicable credit is later determined to need adjustment.

Commenters asked that excessive payment provisions not apply if allocations of tax-exempt bond proceeds to expenditures under § 1.148–6 occur after a project is placed in service. As described in part IV.A of this Summary of Comments and Explanation of Revisions, excessive payment provisions may apply if the amount the applicable entity treats as a payment under section 6417(a) (including the allocations of tax-exempt bond expenditures) is greater than the amount of the credit that, without application of section 6417, would be otherwise allowable (as determined pursuant to section 6417(d)(2) and without regard to section 38(c)). However, as described in part VI.A of this Summary of Comments and Explanation of Revisions, if a taxpayer amends their return or files an AAR before the IRS opens an examination, then the 20-percent addition to tax does not apply.

One commenter requested guidance that the rules under section 50(c) regarding the reduction of basis (section 50(c) basis reduction rules) and the recapture of credits will not cause tax-exempt bond proceeds to be deallocated from project costs. The section 50(c)

[12] For additional information, *see https://www.irs.gov/credits-deductions/elective-pay-and-transferability.*

basis reduction rules are outside of the scope of these final regulations. The Treasury Department and the IRS clarify that the section 50(c) basis reduction rules apply to the credit that is determined, but any effect on the allocation or deallocation of tax-exempt bond proceeds occurs outside of these final regulations.

A few commenters asked whether refundable credits pledged as security or used to pay debt service for a bond issue results in a Federal guarantee of the bonds per section 149 of the Code. The Treasury Department and the IRS confirm that a pledge of the refundable credits as security for, or the use of the refundable credits to pay debt service on, the bonds *by itself* does not result in a Federal guarantee of the bonds.

One commenter wanted confirmation that the existing allocation and accounting rules in § 1.141–6 apply with respect to the credit reduction for tax-exempt bond financing under section 45(b)(3), whereas another commenter requested that the regulations under section 141 be ''modernized'' in light of the enactment of section 6417. Regulations under section 141 are outside of the scope of these final regulations.

Commenters requested that the reduction for restricted tax exempt amounts considered in the special rule for investment-related credit property acquired with tax exempt income in proposed § 1.6417–2(c)(3) be calculated after the 15 percent credit reduction under section 45(b)(3) related to tax-exempt financing is made. The Treasury Department and the IRS confirm that the rule in § 1.6417–2(c)(3) applies after application of any reduction under section 45(b)(3) because determination of the underlying credit amount occurs before the amount is possibly adjusted by section 6417 and the regulations thereunder.

Commenters requested confirmation that the 15-percent credit reduction under section 45(b)(3) for the use of tax-exempt financing is applied separately and independently to each co-tenant's undivided interest in cases in which applicable credit property is held as a TIC or JOA. The Treasury Department and the IRS can confirm that each co-tenant's undivided interest is an undivided ownership share of the applicable credit property and will be treated as a separate applicable credit property owned by such applicable entity under § 1.6417–2(a)(1)(iii). Thus, it will be necessary for each owner to determine whether its undivided ownership share is subject to the reduction under section 45(b)(3).

D. Comments About Other Code Provisions

Multiple commenters asked about the application of other Code provisions. For example, commenters asked for guidance on the underlying credits or bonus provisions such as the energy communities bonus amount, the prevailing wage and apprenticeship bonus amounts, and the domestic content bonus amount and for domestic content waivers. Commenters asked that the placed in service requirements be clarified or relaxed in various ways. Commenters requested guidance under section 30C, including a map or searchable address database that clearly shows eligible census tracts. Commenters also asked for guidance under sections 45U, 45V, and 48; asked whether the 5 MW maximum threshold for projects qualifying for the Low-Income Bonus to the ITC applies to individual sites or interconnection points; asked what is allowed in the cost basis of the project (*e.g.,* infrastructure costs and soft costs); asked for guidance on the ''clean electricity ITC and PTC;'' and asked for clarifications regarding 45X facilities (how to designate different parts as different facilities). Commenters asked what methods tax-exempt entities could use to monetize depreciation deductions and that applicable entities should be able to make elective payment elections with respect to section 179D deductions. All of these comments are outside the scope of this rulemaking, which addresses only sections 6417 and 6241.

E. Comments About Provisions Outside the Internal Revenue Code

Multiple commenters asked for guidance on provisions that are not a part of the Code. For example, commenters requested (1) guidance on how a city could protect itself from liability without losing the ability to make an elective payment election because of the per se corporation rule; (2) guidance on how an applicable entity could obtain funding related to payments it expects to receive from making an elective payment election; (3) clarification on whether applicable credits are treated as ''proceeds . . . from any other activities of the Corporation'' under 16 U.S.C. 831y; (4) guidance on whether refunds greater than $5 million will require review by the Joint Committee on Taxation; (5) confirmation that for a partnership (i) with a tax-exempt electric cooperative as a partner, and (ii) that elects under section 761 to be excluded from the application of subchapter K, the basis of the allocable share of property to the tax exempt electric cooperative is determined both by tax law plus any other costs incurred by the tax exempt electric cooperative using book accounting in accordance with generally acceptable accounting principles (GAAP) that are properly capitalizable;[13] and (6) guidance on whether a municipal utility that builds a qualifying bioenergy project and seeks the tax incentive could also consider implementing an eRINs program with the renewable energy produced, and if so, whether this impacts the tax incentive in any way, or causes a reduction in the incentive. All of these comments are outside the scope of this rulemaking.

Effect on Other Documents

The temporary regulations are removed May 10, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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.

The collections of information in these final regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under Section 1.6001–1(e). These records are required for the IRS to validate that

[13] The commenter stated that tax-exempt electric cooperatives, as tax-exempt entities, use book accounting based on GAAP and Uniform Systems of Account such as provided by the Rural Utilities Service, and stated that it would be helpful to know that, while their initial basis in a partnership asset may have been determined on a tax basis, cost subsequent to the election under section 761 to be excluded from the application of subchapter K that are properly capitalizable under GAAP are also properly includible in the cost basis of a qualifying asset for Federal income tax purposes.

taxpayers have met the regulatory requirements and are entitled to make an elective payment election. For PRA purposes, general tax records are already approved by OMB under 1545–0047 for tax-exempt organizations and government entities; 1545–0074 for individuals; and under 1545–0123 for business entities.

These final regulations also mention reporting requirements related to making elections as detailed in §§ 1.6417–2 and 1.6417–3 and calculating the claim amounts as detailed in §§ 1.6417–2 and 1.6417–4. These elections will be made by taxpayers on Forms 990–T, 1040, 1120–S, 1065, and 1120; and credit calculations will be made on Form 3800 and supporting forms. These forms are approved under 1545–0047 for tax-exempt organizations and governmental entities; 1545–0074 for individuals; and 1545–0123 for business entities.

These final regulations also mention recapture procedures as detailed in § 1.6417–6. These recaptures are performed using Form 4255. This form is approved under 1545–0047 for tax-exempt organizations and governmental entities; 1545–0074 for individuals; and 1545–0123 for business entities. These final regulations are not changing or creating new collection requirements not already approved by OMB.

These final regulations mention a requirement to register with the IRS to be able to elect payments as detailed in § 1.6417–5. The pre-filing registration portal is approved under 1545–2310 for all filers.

The IRS solicited feedback on the collection requirements for reporting, recordkeeping, and pre-filing registration. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the proposed regulations. As described in the relevant portions of this preamble, the Treasury Department and the IRS believe that the documentation requirements are necessary to administer the elective payment election under section 6417.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether these final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. Because there is a possibility of significant economic impact on a substantial number of small entities, a FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, this notice of final rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

1. Need for and Objectives of the Rule

These final regulations provide greater clarity to taxpayers that intend to take advantage of the credit monetization mechanism in section 6417. It provides needed definitions, the time and manner to make the election, and information about the pre-filing registration process, among other items. The Treasury Department and the IRS intend and expect that giving taxpayers guidance that allows them to use section 6417 will beneficially impact various industries, delivering benefits across the economy, and reduce economy-wide greenhouse gas emissions.

In particular, section 6417 allows applicable entities to treat an applicable credit as a payment against Federal income taxes and defines applicable entities to include many entities that may not have any tax liability. Allowing entities without sufficient Federal income tax liability to use a business tax credit to instead make an election to receive a refund of any overpayment of taxes created by the elective payment election will increase the incentive for taxpayers to invest in clean energy projects that give rise to applicable credits because it will increase the amount of cash available to those entities, thereby reducing the amount of financing needed for clean energy projects.

2. Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the Proposed Rules and policies presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

3. Affected Small Entities

The RFA directs agencies to provide a description of, and if feasible, an estimate of, the number of small entities that may be affected by the final regulations, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these final regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these final regulations and in this FRFA, section 6417 and these final regulations may affect a variety of different entities across several different industries as there are 12 different applicable credits for which an elective payment election may be made. Further, the elective payment election for 3 of the applicable credits may be made both by applicable entities and by taxpayers other than applicable entities. Although there is uncertainty as to the exact number of small businesses within this group, the current estimated number of respondents to these final rules is 20,000 taxpayers, as described in the Paperwork Reduction Act section of the preamble.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses once taxpayers start to make the elective payment election using the guidance and procedures provided in these final regulations.

4. Impact of the Rules

These final regulations provide rules for how taxpayers can take advantage of the section 6417 credit monetization regime. Taxpayers that elect to take advantage of section 6417 will have administrative costs related to reading and understanding the rules as well as recordkeeping and reporting requirements because of the pre-filing registration and tax return requirements. The costs will vary across different-sized entities and across the type of project(s) in which such entities are engaged.

The pre-filing registration process requires a taxpayer to register itself as intending to make the elective payment election, to list all applicable credits it intends to claim, and to list each applicable credit property that contributed to the determination of such credits. This process must be completed to receive a registration number for each

applicable credit property with respect to which the applicable taxpayer intends to make an elective payment election. To make the elective payment election and claim the credit, the taxpayer must file an annual tax return. The reporting and recordkeeping requirements for that return would be required for any taxpayer that is claiming a general business credit, regardless of whether the taxpayer was making an elective payment election under section 6417.

Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

5. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the final regulations. For example, in adopting the pre-filing registration requirements, the Treasury Department and the IRS considered whether such information could be obtained at the filing of the relevant annual tax return. However, the Treasury Department and the IRS decided that such an option would increase the opportunity for duplication, fraud, improper payments, or excessive payments under section 6417 as well as potentially delaying payments to qualifying taxpayers. Section 6417(d)(5) specifically authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 6417 as a condition of, and prior to, any amount being treated as a payment that is made by an applicable entity under section 6417. As described in the preamble to these final regulations, these final rules carry out that Congressional intent as pre-filing registration allows for the IRS to verify certain information in a timely manner and then process the annual tax return with minimal delays. Having a distinction between applicable entities or electing taxpayers that are small businesses versus others making an elective payment election would create a scenario in which a subset of taxpayers seeking to make an elective payment election would not have been verified or received registration numbers, potentially delaying payment not only to them but to other taxpayers seeking to use section 6417.

Additionally, in considering how taxpayers should claim the credits and make the elective payment election, the Treasury Department and the IRS considered creating an election system outside of the tax return filing system. However, it was determined that such a process would not be an efficient use of resources, especially given the statutory due date to make an election, which is the return filing date for the taxpayers with a filing obligation (which would include small business taxpayers). The Treasury Department and the IRS decided that the most efficient and reliable method is to use the existing method for claiming business tax credits; that is, the filing of the annual tax return. To create a different method for small businesses making an elective payment election than for a small business claiming the credit (or a larger business making an elective payment election or claiming the credit) would create an additional burden for both small businesses and the IRS, without any commensurate benefit.

The Treasury Department and the IRS solicited comments on the requirements in the proposed regulations, including specifically whether there are less burdensome alternatives that do not increase the risk of duplication, fraud, improper payments, or excessive payments under section 6417. The comments received in response to this request have been discussed in the preceding paragraphs.

6. Duplicative, Overlapping, or Conflicting Federal Rules

These final regulations do not duplicate, overlap, or conflict with any relevant Federal rules. As discussed above, these final regulations merely provide procedures and definitions to allow taxpayers to take advantage of the ability to make an elective payment election. The Treasury Department and the IRS solicited input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements. No comments were received in response to this request.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

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

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive Order. These final regulations do not have substantial direct effects on one or more federally recognized Indian tribes and do not impose substantial direct compliance costs on Indian tribal governments within the meaning of the Executive Order.

Nevertheless, on July 17, 2023, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the proposed rules published on June 21, 2023, which informed the development of these final regulations.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov*.

Drafting Information

The principal authors of these final regulations are Jeremy Milton and James Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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Sections 1.6417–0 through 1.6417–6 also issued under 26 U.S.C. 6417(h).

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■ **Par. 2.** Sections 1.6417–0 through 1.6417–6 are added to read as follows:

Sec.

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§ 1.6417–0 Table of Contents.

This section lists the table of contents for §§ 1.6417–1 through 1.6417–6.

§ 1.6417–1 Elective payment election of applicable credits.

(a) *In general.* An applicable entity may make an elective payment election with respect to any applicable credit determined with respect to such applicable entity in accordance with section 6417 of the Code and the section 6417 regulations. Paragraphs (b) through (p) of this section provide definitions applicable to the section 6417 regulations. *See* § 1.6417–2 for rules and procedures under which all elective payment elections must be made, rules for determining the amount and the timing of payments, and statutory rules denying double benefits. *See* § 1.6417–3 for special rules pertaining to electing taxpayers. *See* § 1.6417–4 for special rules pertaining to electing taxpayers that are partnerships or S corporations. *See* § 1.6417–5 for pre-filing registration requirements and other information required to make any elective payment election effective. *See* § 1.6417–6 for special rules related to excessive payments, basis reduction and recapture, any U.S. territory with a mirror code tax system, and payments made to partnerships subject to subchapter C of chapter 63 of the Code.

(b) *Annual tax return.* The term *annual tax return* means the following returns (and for each, any successor return)—

(1) For any taxpayer normally required to file a tax return with the IRS on an annual basis, such return (including the Form 1040 for individuals; the Form 1120 for corporations, certain rural electric cooperatives, and certain agencies and instrumentalities; the Form 1120–S for S corporations; the Form 1065 for partnerships; and the Form 990–T for organizations subject to tax imposed by section 511 of the Code or a proxy tax under section 6033(e) or that are required to file a Form 990 pursuant to section 6033(a));

(2) For any taxpayer that is not normally required to file a tax return with the IRS on an annual basis (such as taxpayers located in the U.S. territories), the return they would be required to file if they were located in the United States, or, if no such return is required (such as for governmental entities), the Form 990–T; and

(3) For taxpayers filing a return for a taxable year of less than 12 months (short year), the short year tax return.

(c) *Applicable entity.* The term a*pplicable entity* means—

(1) Any organization exempt from the tax imposed by subtitle A of the Code—

(i) By reason of subchapter F of chapter 1 of subtitle A; or

(ii) Because it is the government of any U.S. territory or a political subdivision thereof;

(2) Any State, the District of Columbia, or political subdivision thereof;

(3) An Indian Tribal government or a subdivision thereof;

(4) Any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m));

(5) The Tennessee Valley Authority;

(6) Any corporation operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas as described in section 1381(a)(2)(C) of the Code; and

(7) An agency or instrumentality of any applicable entity described in paragraph (c)(1)(ii) or (c)(2) or (3) of this section.

(d) *Applicable credit.* The term a*pplicable credit* means each of the following:

(1) So much of the credit for alternative fuel vehicle refueling property determined under section 30C of the Code that, pursuant to section 30C(d)(1), is treated as a credit listed in section 38(b) of the Code (section 30C credit).

(2) So much of the renewable electricity production credit determined under section 45(a) of the Code as is attributable to qualified facilities that are originally placed in service after December 31, 2022 (section 45 credit).

(3) So much of the credit for carbon oxide sequestration determined under section 45Q(a) of the Code as is attributable to carbon capture equipment that is originally placed in service after December 31, 2022 (section 45Q credit).

(4) The zero-emission nuclear power production credit determined under section 45U(a) of the Code (section 45U credit).

(5) So much of the credit for production of clean hydrogen determined under section 45V(a) of the Code as is attributable to qualified clean hydrogen production facilities that are originally placed in service after December 31, 2012 (section 45V credit).

(6) In the case of a tax-exempt entity described in section 168(h)(2)(A)(i), (ii), or (iv) of the Code, the credit for qualified commercial vehicles determined under section 45W of the Code by reason of section 45W(d)(2) (section 45W credit).

(7) The credit for advanced manufacturing production determined under section 45X(a) of the Code (section 45X credit).

(8) The clean electricity production credit determined under section 45Y(a) of the Code (section 45Y credit).

(9) The clean fuel production credit determined under section 45Z(a) of the Code (section 45Z credit).

(10) The energy credit determined under section 48 of the Code (section 48 credit).

(11) The qualifying advanced energy project credit determined under section 48C of the Code (section 48C credit).

(12) The clean electricity investment credit determined under section 48E of the Code (section 48E credit).

(e) *Applicable credit property.* The term *applicable credit property* means each of the following units of property with respect to which the amount of an applicable credit is determined:

(1) In the case of a section 30C credit, a *qualified alternative fuel vehicle refueling property* described in section 30C(c).

(2) In the case of a section 45 credit, a *qualified facility* described in section 45(d).

(3) In the case of a section 45Q credit, a component of carbon capture equipment within a *single process train* described in § 1.45Q–2(c)(3).

(4) In the case of a section 45U credit, a *qualified nuclear power facility* described in section 45U(b)(1).

(5) In the case of a section 45V credit, a *qualified clean hydrogen production facility* described in section 45V(c)(3).

(6) In the case of a section 45W credit, a *qualified commercial clean vehicle* described in section 45W(c).

(7) In the case of a section 45X credit, a facility that produces eligible components, as described in guidance under sections 48C and 45X.

(8) In the case of a section 45Y credit, a *qualified facility* described in section 45Y(b)(1).

(9) In the case of a section 45Z credit, a *qualified facility* described in section 45Z(d)(4).

(10) *Section 48 credit property*—(i) *In general.* In the case of a section 48 credit and except as provided in paragraph (d)(10)(ii) of this section, an *energy property* described in section 48.

(ii) *Pre-filing registration and elections.* At the option of an applicable entity or electing taxpayer, and to the extent consistently applied for purposes of the pre-filing registration requirements of § 1.6417–5 and the elective payment election requirements of §§ 1.6417–2 through 1.6417–4, an *energy project* as described in section 48(a)(9)(A)(ii) and defined in guidance.

(11) In the case of a section 48C credit, an *eligible property* described in section 48C(c)(2).

(12) In the case of a section 48E credit, a *qualified facility* described in section 48E(b)(3) or, in the case of a section 48E credit relating to a qualified investment with respect to energy storage technology, an *energy storage technology* described in section 48E(c)(2).

(f) *Disregarded entity.* The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner for Federal income tax purposes under §§ 301.7701–1 through 301.7701–3 of this chapter. The term includes a Tribal corporation incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203, that is not recognized as an entity separate from the tribe for Federal tax purposes, and therefore is disregarded as an entity separate from its owner for purposes of section 6417.

(g) *Electing taxpayer.* The term e*lecting taxpayer* means any taxpayer that is not an applicable entity described in paragraph (c) of this section but makes an election in accordance with §§ 1.6417–2(b), 1.6417–3, and, if applicable, 1.6417–4, to be treated as an applicable entity for a taxable year with respect to applicable credits determined with respect to an applicable credit property described in paragraph (e)(3), (5), or (7) of this section.

(h) *Elective payment amount*—(1) *In general.* The term *elective payment amount* means, with respect to an applicable entity or an electing taxpayer that is not a partnership or an S corporation, the applicable credit(s) for which an applicable entity or electing taxpayer makes an elective payment election to be treated as making a payment against the tax imposed by subtitle A for the taxable year, which is equal to the sum of—

(i) The amount (if any) of the current year applicable credit(s) allowed as a general business credit under section 38 for the taxable year, as provided in § 1.6417–2(e)(2)(iii), and

(ii) The amount (if any) of unused current year applicable credits that would otherwise be carried back or carried forward from the unused credit year under section 39 and that are treated as a payment against tax, as provided in § 1.6417–2(e)(2)(iv).

(2) *Elective payment amount with respect to partnerships and S corporations.* With respect to an electing taxpayer that is a partnership or an S corporation, the term *elective payment amount* means the sum of the applicable credit(s) for which the partnership or S corporation makes an elective payment election and that results in a payment to such partnership or S corporation equal to the amount of such credit(s) (unless the partnership owes a Federal tax liability, in which case the payment may be reduced by such tax liability).

(i) *Elective payment election.* The term *elective payment election* means an election made in accordance with § 1.6417–2(b) for applicable credit(s) determined with respect to an applicable entity or electing taxpayer.

(j) *Guidance.* The term *guidance* means guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the *IRS.gov* website. *See* §§ 601.601 and 601.602 of this chapter.

(k) *Indian Tribal government.* The term *Indian Tribal government* means the recognized governing body of any Indian or Alaska Native Tribe, band,

nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the most recent list published by the Department of the Interior in the **Federal Register** pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131) prior to the date on which a relevant elective payment election is made.

(l) *Partnership.* The term *partnership* has the meaning provided in section 761 of the Code.

(m) *S corporation.* The term *S corporation* has the meaning provided in section 1361(a)(1) of the Code.

(n) *Section 6417 regulations.* The term *section 6417 regulations* means §§ 1.6417–1 through 1.6417–6.

(o) *Statutory references*—(1) *Chapter 1.* The term *chapter 1* means chapter 1 of the Code.

(2) *Code.* The term *Code* means the Internal Revenue Code.

(3) *Subchapter K.* The term *subchapter K* means subchapter K of chapter 1.

(4) *Subtitle A.* The term *subtitle A* means subtitle A of the Code.

(p) *U.S. territory.* The term *U.S. territory* means the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(q) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§ 1.6417–1 through 1.6417–4 and 1.6417–6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.6417–2 Rules for making elective payment elections.

(a) *Elective payment elections*—(1) *Elections by applicable entities*—(i) *In general.* An applicable entity that makes an elective payment election in the manner provided in paragraph (b) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A for the taxable year with respect to which an applicable credit is determined in the amount determined under paragraph (c) of this section.

(ii) *Disregarded entities.* If an applicable entity is the owner (directly or indirectly) of a disregarded entity that directly holds an applicable credit property, the applicable entity may make an elective payment election in the manner provided in paragraph (b) of this section for applicable credits determined with respect to the applicable credit property held directly by the disregarded entity.

(iii) *Undivided ownership interests.* If an applicable entity is a co-owner in an applicable credit property through an arrangement properly treated as a tenancy-in-common for Federal income tax purposes, or through an organization that has made a valid election under section 761(a) of the Code to be excluded from the application of subchapter K of the Code, then the applicable entity's undivided ownership share of the applicable credit property will be treated as a separate applicable credit property owned by such applicable entity, and the applicable entity may make an elective payment election in the manner provided in paragraph (b) of this section for the applicable credits determined with respect to such applicable credit property.

(iv) *Partnerships and S corporations not applicable entities.* Partnerships and S corporations are not applicable entities described in § 1.6417–1(c), and thus are not eligible to make any election under paragraph (b) of this section, unless the partnership or S corporation is an electing taxpayer. This is the case no matter how many of the partners of a partnership are described in § 1.6417–1(c), including if all of a partnership's partners are so described.

(v) *Members of a consolidated group of which an applicable entity is the common parent.* In the case of a consolidated group (as defined in § 1.1502–1) the common parent of which is an applicable entity, any member that is an electing taxpayer may make an elective payment election with respect to applicable credits determined with respect to the member. See § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(2) *Electing taxpayers*—(i) *Electing taxpayers that are not partnerships or S corporations.* An electing taxpayer other than a partnership or an S corporation that has made an elective payment election in accordance with § 1.6417–3 and paragraph (b) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A of the Code for the taxable year with respect to which the applicable credit is determined, in the amount determined under paragraph (c) of this section.

(ii) *Electing taxpayers that are partnerships or S corporations.* In the case of an electing taxpayer that is a partnership or S corporation that has made an elective payment election in accordance with §§ 1.6417–3 and 1.6417–4 and paragraph (b) of this section, the Internal Revenue Service will make a payment to such partnership or S corporation equal to the amount of such credit determined under paragraph (c) of this section and § 1.6417–4(d) (unless the partnership owes any Federal income tax liability, in which case the payment may be reduced by such tax liability).

(iii) *Partners and S corporation shareholders prohibited from making any elective payment election.* Under section 6417(c)(1) of the Code, any elective payment election with respect to applicable credit property held directly by a partnership or S corporation must be made by the partnership or S corporation. As provided under section 6417(c)(2), no partner in a partnership, or shareholder of an S corporation, may make an elective payment election with respect to any applicable credit determined with respect to such applicable credit property.

(iv) *Disregarded entities.* If an electing taxpayer is the owner (directly or indirectly) of a disregarded entity that directly holds any applicable credit property, the electing taxpayer may make an elective payment election in the manner provided in paragraph (b) of this section for applicable credits determined with respect to the applicable credit property held directly by the disregarded entity.

(v) *Undivided ownership interests.* If an electing taxpayer is a co-owner in an applicable credit property through an arrangement properly treated as a tenancy-in-common for Federal income tax purposes, or through an organization that has made a valid election under section 761(a) to be excluded from the application of subchapter K of the Code, then the electing taxpayer's undivided ownership interest in or share of the applicable credit property will be treated as a separate applicable credit property owned by such electing taxpayer, and the electing taxpayer may make an elective payment election in the manner provided in paragraph (b) of this section for the applicable credits determined with respect to such applicable credit property.

(vi) *Members of a consolidated group.* A member of a consolidated group may make an elective payment election with respect to applicable credits determined with respect to the member. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(3) *Special rules for certain credits*—(i) *Renewable electricity production credit.* Any election under this paragraph (a) with respect to a section 45 credit—

(A) Applies separately with respect to each qualified facility;

(B) Must be made in the manner provided in paragraph (b) of this section for the taxable year in which such qualified facility is originally placed in service; and

(C) Applies to such taxable year and to any subsequent taxable year that is within the period described in section 45(a)(2)(A)(ii) with respect to such qualified facility.

(ii) *Credit for carbon oxide sequestration.* Except as provided in § 1.6417–3(c), which provides a special rule for electing taxpayers, any election under this paragraph (a) with respect to a section 45Q credit—

(A) Applies separately with respect to the carbon capture equipment originally placed in service by the applicable entity during a taxable year;

(B) Must be made in the manner provided in paragraph (b) of this section for the taxable year in which such carbon capture equipment is originally placed in service; and

(C) Applies to such taxable year and to any subsequent taxable year that is within the period described in section 45Q(3)(A) or (4)(A) with respect to such equipment.

(iii) *Credit for production of clean hydrogen.* Except as provided in § 1.6417–3(b), which provides a special rule for electing taxpayers, any election under this paragraph (a) with respect to a section 45V credit—

(A) Applies separately with respect to each qualified clean hydrogen production facility;

(B) Must be made in the manner provided in paragraph (b) of this section for the taxable year in which such facility is placed in service (or within the 1-year period after August 16, 2022, for facilities placed in service before December 31, 2022); and

(C) Applies to such taxable year and all subsequent taxable years with respect to such facility.

(iv) *Clean electricity production credit.* Any elective payment election with respect to a section 45Y credit—

(A) Applies separately with respect to each qualified facility;

(B) Must be made in the manner provided in paragraph (b) of this section for the taxable year in which such facility is placed in service; and

(C) Applies to such taxable year and to any subsequent taxable year that is within the period described in section 45Y(b)(1)(B) with respect to such facility.

(v) A*dvanced manufacturing production credit.* Any elective payment election with respect to a section 45X credit applies separately with respect to each facility (whether the facility existed on or before, or after, December 31, 2022) at which a taxpayer produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) during the taxable year.

(b) *Manner of making election*—(1) *In general*—(i) *Election is made on the annual tax return.* An elective payment election is made on the annual tax return, as defined in § 1.6417–1(b), in the manner prescribed by the IRS in guidance, along with any required completed source credit form(s) with respect to the applicable credit property, a completed Form 3800, *General Business Credit,* (or its successor), and any additional information, including supporting calculations, required in instructions.

(ii) *Election must be made on original return.* An election must be made on an original return (including any revisions on a superseding return) filed not later than the due date (including extensions of time) for the original return for the taxable year for which the applicable credit is determined. No elective payment election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code. A numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary; however, the applicable entity or electing taxpayer's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. To properly correct an error on an amended return or administrative adjustment request under section 6227, an applicable entity or electing taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; an applicable entity or electing taxpayer may not correct a blank item or an item that is described as being ''available upon request.'' There is no relief available under § 301.9100–1 or § 301.9100–3 of this chapter for an elective payment election that is not timely filed; however, relief under § 301.9100–2(b) may apply if the applicable entity or electing taxpayer has not received an extension of time to file a return after the original due date, has timely filed a return, takes corrective action under § 301.9100–2(c) within the six-month extension period, and meets the procedural requirements outlined in § 301.9100–2(d).

(2) *Pre-filing registration required.* Pre-filing registration in accordance with § 1.6417–5 is a condition for making an elective payment election. An elective payment election will not be effective with respect to credits determined with respect to an applicable credit property unless the applicable entity or electing taxpayer received a valid registration number for the applicable credit property in accordance with § 1.6417–5(c) and provided the registration number for each applicable credit property on its Form 3800 (or its successor), and on any required completed source form(s) with respect to the applicable credit property, attached to the tax return, in accordance with guidance.

(3) *Due date for making the election.* To be effective, an elective payment election must be made no later than:

(i) In the case of any taxpayer for which no Federal income tax return is required under sections 6011 or no Federal return is required under 6033(a) of the Code (such as a State; the District of Columbia; an Indian Tribal government; any U.S. territory; a political subdivision of a State, the District of Columbia, or a U.S. territory, or a subdivision of an Indian Tribal government; certain agencies or instrumentalities of a State, the District of Columbia, an Indian Tribal government, or a U.S. territory; or a taxpayer excluded from filing pursuant to section 6033(a)(3)), the 15th day of the fifth month after the end of the taxable year. For purposes of section 6417, an applicable entity that is not required to file a Federal income tax return pursuant to sections 6011 or a Federal return pursuant to 6033(a), but is filing solely to make an elective payment election, may choose whether to file its first return (and thus adopt a taxable year for purposes of section 6417) based upon a calendar or fiscal year, provided that such entity maintains adequate book and records, including a reconciliation of any difference between its regular books of account and its chosen taxable year, to support making an elective payment election on the basis of its chosen taxable year. Subject to issuance of guidance that specifies the manner in which an entity for which no Federal income tax return is required under sections 6011 or no Federal return is required pursuant to 6033(a) could request an extension of time to file and make the elective payment election, an automatic paperless six-month extension from the 15th day of the fifth month after the end of the taxable year is deemed to be allowed.

(ii) In the case of any taxpayer located in a U.S. territory, the due date (including extensions of time) that would apply if the taxpayer were located in the United States.

(iii) In any other case, the due date (including extensions of time) for the original return for the taxable year for which the election is made, but in no event earlier than February 13, 2023.

(4) *Election is not revocable*—(i) *In general.* Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, any elective payment election, once made, is irrevocable and applies with respect to any applicable credit for the taxable year for which the election is made.

(ii) *Election lasts for a period of years for certain credits.* For applicable entities making elective payment elections with respect to section 45 credits described in § 1.6417–1(d)(2) or section 45Y credits described in § 1.6417–1(d)(8), the election applies to each taxable year in the 10-year period provided in section 45(a)(2)(A)(ii) or 45Y(b)(1)(B), respectively, beginning on the date the facility was originally placed in service. For applicable entities making elective payment elections with respect to section 45Q credits described in § 1.6417–1(d)(3), the election applies to each taxable year in the 12-year period provided in section 45Q(a)(3)(A) or (4)(A) beginning on the date the carbon capture equipment was originally placed in service. For applicable entities making elective payment elections with respect to section 45V credits described in § 1.6417–1(d)(5), the election applies to the taxable year in which the qualified clean hydrogen production facility was originally placed in service and all subsequent taxable years.

(iii) *Electing taxpayers.* For electing taxpayers who make an elective payment election, the election applies for one five-year period per applicable credit property, but such election may be revoked once per applicable credit property, as provided in § 1.6417–3.

(5) *Scope of election.* An elective payment election applies to the entire amount of applicable credit(s) determined with respect to each applicable credit property that was properly registered for the taxable year, resulting in an elective payment amount that is the entire amount of applicable credit(s) determined with respect to the applicable entity or electing taxpayer for a taxable year.

(c) *Determination of applicable credit*—(1) *In general.* In the case of any applicable entity making an elective payment election, any applicable credit is determined—

(i) Without regard to section 50(b)(3) and (4)(A)(i) of the Code, and

(ii) By treating any property with respect to which such credit is determined as used in a trade or business of the applicable entity.

(2) *Effect of trade or business rule.* The trade or business rule in paragraph (c)(1)(ii) of this section—

(i) Allows the applicable entity to treat an item of property as if it is: of a character subject to an allowance of depreciation (such as under sections 30C and 45W); one for which depreciation (or amortization in lieu of depreciation) is allowable (such as in sections 48, 48C, and 48E); and used to produce items in the ordinary course of a trade or business of the taxpayer (such as in sections 45V and 45X);

(ii) Allows the applicable entity to apply the capitalization and accelerated depreciation rules (such as sections 167, 168, 263, 263A, and 266 of the Code) that apply to determining the basis and the depreciation allowance for property used in a trade or business;

(iii) Makes applicable those credit limitations generally applicable to persons engaged in the conduct of a trade or business, such as section 49 of the Code in the context of investment tax credits and section 469 of the Code for all applicable credits;

(iv) Does not create any presumption that the trade or business is related (or unrelated) to a tax-exempt entity's exempt purpose; and

(v) Subjects the applicable entity to the credit limitation in paragraph (c)(3)(ii) of this section.

(3) *Special rule for investment-related credit property acquired with amounts, including income from certain grants and forgivable loans, that are exempt from taxation*—(i) *Amounts included in basis.* Subject to paragraph (c)(3)(ii) of this section, for purposes of section 6417, amounts that are exempt from taxation under subtitle A or otherwise excluded from taxation (such as income from certain grants and forgivable loans), and used to purchase, construct, reconstruct, erect, or otherwise acquire an applicable credit property described in section 30C, 45W, 48, 48C, or 48E (investment-related credit property) are included in basis for purposes of computing the applicable credit amount determined with respect to the applicable credit property, regardless of whether basis is required to be reduced (in whole or in part) by such amounts under general tax principles.

(ii) *No excess benefit from restricted tax exempt amounts.* If an applicable entity receives a grant, forgivable loan, or other income exempt from taxation under subtitle A or otherwise excluded from taxation (tax exempt amount) for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property (restricted tax exempt amount), and the sum of any restricted tax exempt amounts plus the applicable credit otherwise determined with respect to that investment-related credit property exceeds the cost of the investment-related credit property, then the amount of the applicable credit is reduced so that the total amount of applicable credit plus the amount of any restricted tax exempt amounts equals the cost of investment-related credit property. The determination of whether a tax exempt grant is made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property is made at the time the grant is awarded to the applicable entity. A tax exempt grant awarded after the investment-related credit property is purchased, constructed, reconstructed, erected, or otherwise acquired is generally not a restricted tax exempt amount unless approval of the grant was perfunctory and the amount of the grant was virtually assured at the time of application. The determination of whether a loan is made for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property and whether forgiveness of that loan is dependent on satisfying that specific purpose is made at the time the loan is approved. This paragraph does not apply if a tax exempt amount is not received for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring a property eligible for an investment-related credit; for example, if the tax exempt amount is from the organization's general funds or if such amount's use is not restricted to the purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property (such as purchasing an electric vehicle) and could be used for any of several different applicable credit properties (such as purchasing an electric vehicle or purchasing solar panels) or can be put to other purposes (such as purchasing an electric vehicle or making a building more energy efficient).

(4) *Credits must be determined with respect to the applicable entity or electing taxpayer.* Any credits for which an elective payment election is made must have been determined with respect to the applicable entity or electing

taxpayer. An applicable credit is determined with respect to an applicable entity or electing taxpayer if the applicable entity or electing taxpayer owns the underlying applicable credit property and conducts the activities giving rise to the credit or, in the case of section 45X (under which ownership of applicable credit property is not required), to be considered (under the section 45X regulations) the taxpayer with respect to which the section 45X credit is determined. Thus, no election may be made under this section for any credits transferred pursuant to section 6418, allowed pursuant to section 45Q(f)(3), acquired by a lessee from a lessor by means of an election to pass through the credit to a lessee under former section 48(d) (pursuant to section 50(d)(5)), owned by a third party, or otherwise not determined with respect to the applicable entity or electing taxpayer.

(5) *Examples.* The following examples illustrate the rules of this paragraph (c).

(i) *Example 1.* School district A receives a tax exempt grant in the amount of $400,000 from the Environmental Protection Agency to purchase electric school bus B. The grant is a restricted tax exempt amount described in paragraph (c)(3)(ii) of this section. A purchases B for $400,000. Pursuant to paragraph (c)(3)(i) of this section, A's basis in B is $400,000. B qualifies for the maximum section 45W credit, $40,000. However, because the amount of the restricted tax exempt grant plus the amount of the section 45W credit exceeds the cost of B, the no excess benefit rule found in paragraph (c)(3)(ii) of this section applies. A's section 45W credit is reduced by the amount necessary so that the total amount of the section 45W credit plus the restricted tax exempt amount equals the cost of B. A's section 45W credit is therefore reduced by $40,000 to zero.

(ii) *Example 2.* Assume the same facts as in paragraph (c)(5)(i) of this section (*Example 1*), except that the grant is in the amount of $300,000. This grant is still a restricted tax exempt amount described in paragraph (c)(3)(ii) of this section. A purchases B using the grant and $100,000 of A's unrestricted funds. A's basis in B is still $400,000 and A's section 45W credit is $40,000. Since the amount of the restricted tax exempt amount plus the amount of the section 45W credit ($340,000) is less than the cost of B, A's 45W credit under section 6417(b)(6) is not subject to the no excess benefit rule found in paragraph (c)(3)(ii) of this section.

(iii) *Example 3.* Public charity B receives a $60,000 grant from a private foundation to build energy property, P, a qualified investment credit property that costs $80,000. The $60,000 grant is a restricted tax exempt amount described in paragraph (c)(3)(ii) of this section. B uses $20,000 of its own funds plus the $60,000 grant to build P. Pursuant to paragraph (c)(3)(i) of this section, B's basis in P is $80,000. Assume that, based upon acquisition cost, B can earn a section 48 investment credit (with bonus credit amounts) of $40,000 (50% of basis). However, because the amount of the restricted tax exempt amount ($60,000) plus the section 48 credit ($40,000) exceeds P's cost by $20,000, the no excess benefit rule found in paragraph (c)(3)(ii) of this section applies to reduce B's section 48 applicable credit by $20,000 so that the total amount of the section 48 investment credit plus the restricted tax exempt amount equals the cost of P.

(iv) *Example 4.* The U.S. Department of Housing and Urban Development annually provides Capital Funds to Public Housing Agencies (PHAs) for the development, financing, and modernization of public housing developments and for management improvements. Public Housing Authority H uses its annual allotment of Capital Funds to purchase rooftop solar panels for its property and to pay for the related equipment and labor to install the panels. These purchases are considered among the list of eligible uses, but are not the exclusive uses, of H's Capital Funds. Although the Capital Funds are exempt from taxation under subtitle A and used to purchase, construct, reconstruct, erect, or otherwise acquire an investment-related credit property, pursuant to paragraph (c)(3)(i) of this section, they are included in basis for purposes of computing the applicable credit amount determined with respect to the applicable credit property. In addition, because the Capital Funds were not given for the specific purpose of purchasing, constructing, reconstructing, erecting, or otherwise acquiring an investment-related credit property, they are not considered restricted tax exempt amounts and the no excess benefit rule found in paragraph (c)(3)(ii) of this section does not apply.

(v) *Example 5.* Taxpayer Q is engaged in the business of capturing carbon oxide. Q properly elects to be treated as an applicable entity with respect to the section 45Q credit determined with respect to single process trains A, B, and C for 2024. In the same year, Q also purchases section 45Q credits under section 6418 from an unrelated taxpayer and has section 45Q credits allowed to itself pursuant to section 45Q(f)(3). Q can make an elective payment election only with respect to section 45Q applicable credits determined with respect to A, B, and C. Q cannot make an elective payment election with respect to any credits transferred to Q pursuant to section 6418 or allowed to Q pursuant to section 45Q(f)(3).

(d) *Timing of payment.* Except as provided in § 1.6417–4(d) (relating to payments to partnerships and S corporations), the elective payment amount will be treated as made—

(1) In the case of any taxpayer for which no Federal income tax return is required under section 6011 or no Federal return is required under 6033(a), on the later of—

(i) The date that is the 15th day of the fifth month after the end of the taxable year, or

(ii) The date on which such taxpayer submits a claim for credit or refund in accordance with paragraph (b) of this section.

(2) In any other case, on the later of—

(i) The due date (determined without regard to extensions) of the return for the taxable year, or

(ii) The date on which such return is filed.

(e) *Denial of double benefit*—(1) *In general.* Under section 6417(e), in the case of an applicable entity or electing taxpayer making an elective payment election with respect to an applicable credit, such credit is reduced to zero and is, for any other purposes of the Code, deemed to have been allowed as a credit to such entity or taxpayer for such taxable year. Paragraph (e)(2) and (3) of this section explain the application of the section 6417(e) denial of double benefit rule to an applicable entity or electing taxpayer (other than a partnership or S corporation). The application of section 6417(e) for an electing taxpayer that is a partnership or S corporation is provided in § 1.6417–4(c)(1)(ii).

(2) *Application of the denial of double benefit rule.* An applicable entity or electing taxpayer (other than an electing taxpayer that is a partnership or S corporation) making an elective payment election applies section 6417(e) by taking the following steps:

(i) Compute the amount of the Federal income tax liability (if any) for the taxable year, without regard to the general business credit allowed by section 38 of the Code (GBC), that is payable on the due date of the return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on amount of tax under section 38.

(ii) Compute the allowed amount of GBC carryforwards carried to the taxable year under section 38(a)(1) plus the amount of current year GBCs (including current applicable credits) for the taxable year under section 38(a)(2) and (b). Because the election is made on an original return for the taxable year for which the applicable credit is determined, any business credit carrybacks are not considered in determining the elective payment amount for the taxable year.

(iii) Calculate the net elective payment amount for all applicable credits, which equals the lesser of the sum of all applicable credits for which an elective payment election is made or the excess (if any, otherwise the excess is zero) of the total GBC credits described in paragraph (e)(2)(ii) of this section over the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on amount of tax under section 38 computed in paragraph (e)(2)(i) of this section. Treat the net elective payment amount of all applicable credits for which an elective payment election is made as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credits are determined.

(iv) Excluding the net elective payment amount determined under paragraph (e)(2)(iii) of this section, but including any applicable credits that are not part of the net elective payment amount, compute the allowed amount of GBC carryforwards carried to the taxable year plus the amount of current year GBCs allowed for the taxable year under section 38 (including, for clarity purposes, the ordering rules in section 38(d)). Apply these GBCs against the tax liability computed in paragraph (e)(2)(i) of this section.

(v) Reduce the applicable credits for which an elective payment election is made by the net elective payment amount, as provided in paragraph (e)(2)(iii) of this section, and by the amount (if any) allowed as a GBC under section 38 for the taxable year, as provided in paragraph (e)(2)(iv) of this section, which results in the applicable credits being reduced to zero.

(3) *Use of applicable credit for other purposes.* The full amount of the applicable credits for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50 and calculation of tax, calculation of the amount of any underpayment of estimated tax under sections 6654 and 6655 of the Code, and the addition to tax for the failure to pay under section 6651(a)(2) of the Code (if any).

(4) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* U is a tax-exempt university that is not a trust subject to section 469 and is described in section 501(c)(3). U's fiscal year runs from July 1 to June 30. U places in service P, energy property eligible for a section 48 credit, in June 2024. P is an asset used in connection with its unrelated business. U completes the pre-filing registration in accordance with § 1.6417–5 as an applicable entity that has placed P into service and intends to make an elective payment election with respect to section 48 credits determined with respect to P. U timely files its 2024 Form 990–T on November 15, 2024. On its return, U properly determines that it has $500,000 of Unrelated Business Income Tax (UBIT) under section 512. On its Form 3800 attached to its return, U calculates its limitation of GBC under section 38(c) (simplified) is $375,000 (paragraph (e)(2)(i) of this section). U attaches Form 3468 to claim a section 48 credit of $100,000 with respect to P (its GBC for the taxable year) (paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $0, so the section 48 credit is considered a credit that reduces U's UBIT liability to $400,000 under paragraph (e)(2)(iv) of this section. U pays its $400,000 tax liability on November 15, 2024. Under paragraph (e)(2)(v) of this section, the $100,000 of section 48 credit is reduced by the $100,000 of applicable credits claimed as GBCs for the taxable year, which results in the applicable credits being reduced to zero. However, the $100,000 of current year section 48 credit is deemed to have been allowed to U for 2024 for all other purposes of the Code (paragraph (e)(3) of this section).

(ii) *Example 2.* Assume the same facts as in paragraph (e)(4)(i) of this section (*Example 1),* except that U has $80,000 of Unrelated Business Income Tax (UBIT) under section 512 and calculates its limitation of GBC under section 38(c) (simplified) is $60,000 (paragraph (e)(2)(i) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $40,000 (lesser of $100,000 applicable section 48 credit or $100,000 of total GBC credits described in paragraph (e)(2)(ii) of this section minus $60,000 of section 38(c) limitation). Under paragraph (e)(2)(iv) of this section, U uses $60,000 of its $100,000 of section 48 credit against its tax liability. U reduces its applicable credit by the $40,000 net elective payment amount determined in paragraph (e)(2)(iii) of this section and by the $60,000 section 48 credit claimed against tax in paragraph (e)(2)(iv) of this section, resulting in the applicable credit being reduced to zero (paragraph (e)(2)(v) of this section). When the IRS processes U's 2024 Form 990–T, the net elective payment amount results in a $20,000 refund to U (after applying $20,000 of the $40,000 net elective payment amount to cover U's tax shown on the return). However, for other purposes of the Code, the $100,000 section 48 credit is deemed to have been allowed to U for 2024 (paragraph (e)(3) of this section).

(iii) *Example 3.* V is a city located in the United States that never has Federal income tax liability, so paragraph (e)(2)(i) of this section does not apply. V timely completes pre-filing registration in accordance with § 1.6417–5 as an applicable entity that will be eligible to make an elective payment election, with regard to its annual accounting period ending in 2024, for the credit determined under section 30C(a) from properties A, B, and C; the credit determined under section 45(a) for facility D; the credit determined under section 45U(a) for facility E; the credit determined under section 45W(a) with respect to vehicles F, G, and H; and the credit determined under section 48(a) with respect to property I and J. V timely files its 2024 Form 990–T. V properly completes and attaches the relevant source credit forms and Form 3800 with registration numbers and all required information in the instructions, properly making the elective payment election for all of the credits, and properly determining that the amount of applicable credits determined with respect to A, B, C, D, E, F, G, H, I, and J is $500,000 (its GBC for the taxable year) (paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $500,000. Under paragraph (e)(2)(iii) of this section, the entire $500,000 net elective payment amount is a payment against the tax imposed by subtitle A for the taxable year with respect to which such credits are determined. When the IRS processes V's 2024 Form 990–T, the net elective payment amount results in a $500,000 refund to V. V's elective payment amount is reduced by the net elective payment amount, so all applicable credits for 2024 are reduced to zero (paragraph (e)(2)(v) of this section). However, for other purposes of the Code, the $500,000 of applicable credits are deemed to have been allowed to V for its annual accounting period ending in 2024 (paragraph (e)(3) of this section).

(iv) *Example 4.* W is a business taxpayer engaged in the manufacturing of components, including eligible components as defined in section 45X(c)(1) at facility F. W completes pre-filing registration in accordance with § 1.6417–5 stating that it intends to elect to be treated as an applicable entity with respect to eligible components produced at F in 2024. In 2025, W timely files its 2024 return electing to be treated as an applicable entity, calculating its Federal income tax before GBCs of $125,000 and that its limitation of GBC under section 38(c) (simplified) is $100,000 (paragraph (e)(2)(i) of this section). W attaches Form 7207 to claim a current section 45X credit of $50,000 with respect to eligible components produced at F (its applicable credits). W also attaches Form 5884 to claim a current work opportunity tax credit (WOTC) of $50,000 (WOTC is not an applicable credit). W also has business credit carryforwards of $25,000, which together with the 45X credit and WOTC results in a total of $125,000 of GBC for the taxable year (paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $25,000. Under paragraph (e)(2)(iv) of this section, including using the ordering rules in section 38(d), W is allowed $25,000 of the carryforwards, $50,000 of WOTC plus only $25,000 of section 45X credit against net income tax, as defined under section 38(c)(1)(B). The $25,000 of unused section 45X credit is the net elective payment amount that results in a $25,000 payment against tax by W (paragraph (e)(2)(iii) of this section). On its return, W shows net tax liability of $25,000 ($125,000–$100,000 allowed GBC) and the net elective payment of $25,000 that W applied to net tax liability, resulting in zero tax owed on the return. Under paragraph (e)(2)(v) of this section, W's applicable credit is reduced by the $25,000 of the net elective payment amount, as well as by the $25,000 of section 45X credit claimed as a GBC for the taxable year, resulting in the $50,000 of applicable credit being reduced to zero. However, for all other purposes of the Code, the $50,000 of 45X applicable credits are deemed to have been allowed to W for 2024 (paragraph (e)(3) of this section). Even though W did not owe tax after applying the net elective payment amount against its net tax liability, W may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.

(v) *Example 5.* Assume the same facts as in paragraph (e)(4)(iv) of this section (*Example 4),* except W filed the return on a timely filed extension after the due date of the return (excluding extensions). Even though the net elective payment amount is sufficient to cover W's tax liability, W may also be subject to the section 6651(a)(2) penalty for failure to pay tax.

(vi) *Example* 6. Assume the same facts as in paragraph (e)(4)(iv) of this section (*Example 4),* except W's activities gave rise to a $100,000 section 45Q credit and W filed a Form 8933, *Carbon Oxide Sequestration Tax Credit,* instead of a $50,000 section 45X credit and Form 7207. Assume also that W's activities gave rise to a $50,000 small employer health insurance credit under section 45R (section 45R credit) and W filed Form 8941, *Credit for Small Employer Health Insurance Premiums,* instead of a $50,000 WOTC and Form 5884. Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $75,000. Under paragraph (e)(2)(iv) of this section, including using the ordering rules in section 38(d), W is allowed $25,000 of the carryforwards, $25,000 of the section 45Q credit, plus its $50,000 of section 45R credit against net income tax, as defined under section 38(c)(1)(B). The $75,000 of unused section 45Q credit that is the net elective payment amount results in a $75,000 payment against tax by W (paragraph (e)(2)(iii) of this section). On its return, W shows net tax liability of $25,000 ($125,000–$100,000 allowed GBC) and the net elective payment amount of $75,000 that W applied to net tax liability, resulting in a refund of $50,000. Under paragraph (e)(2)(v) of this section, W's applicable credit is reduced by the $75,000 of the net elective payment amount, as well as by the $25,000 of section 45Q credit claimed as a GBC for the taxable year, resulting in the $100,000 of applicable credit being reduced to zero. However, for all other purposes of the Code, the $100,000 of section 45Q applicable credits are deemed to have been allowed to W for 2024 (paragraph (e)(3) of this section).

(f) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§ 1.6417–1 through 1.6417–4 and 1.6417–6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.6417–3 Special rules for electing taxpayers.

(a) *In general.* This section relates to the election available to electing taxpayers. An electing taxpayer that makes an elective payment election in accordance with this section is treated as an applicable entity for the duration of the election period, but only with respect to the applicable credit property described in proposed § 1.6417–1(e)(3), (5), or (7), respectively, that is the subject of the election. *See* paragraphs (b), (c), and (d) of this section for the specific rules regarding taxpayers making an election under section 6417(d)(1)(B), (C), or (D), respectively. *See* paragraph (e) of this section for rules relating to the making the election. *See* § 1.6417–4 for special rules related to electing taxpayers that are partnerships or S corporations.

(b) *Elections with respect to the credit for production of clean hydrogen.* An electing taxpayer that has placed in service applicable credit property described in § 1.6417–1(e)(5) (in other words, a qualified clean hydrogen production facility as defined in section 45V(c)(3)) during the taxable year may make an elective payment election for such taxable year (or by August 16, 2023, in the case of facilities placed in service before December 31, 2022), but only with respect to the qualified clean hydrogen production facility, only with respect to the applicable credit described in § 1.6417–1(d)(5) (in other words, the section 45V credit), and only if the pre-filing registration required by § 1.6417–5 was properly completed. An electing taxpayer that elects to treat qualified property that is part of a specified clean hydrogen production facility as energy property under section 48(a)(15) may not make an elective payment election with respect to such facility.

(c) *Election with respect to the credit for carbon oxide sequestration.* An electing taxpayer that has, after December 31, 2022, placed in service applicable credit property described in § 1.6417–1(e)(3) (in other words, a single process train described in § 1.45Q–2(c)(3) at a qualified facility (as defined in section 45Q(d)) during the taxable year may make an elective payment election for such taxable year, but only with respect to the single process train, only with respect to the applicable credit described in § 1.6417–1(d)(3) (in other words, the section 45Q credit), and only if the pre-filing registration required by § 1.6417–5 was properly completed.

(d) *Election with respect to the advanced manufacturing production credit.* An electing taxpayer that produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) at an applicable credit property described in § 1.6417–1(e)(7)

during the taxable year (whether the facility existed on or before, or after, December 31, 2022) may make an elective payment election for such taxable year, but only with respect to the facility at which the eligible components are produced by the electing taxpayer in that year, only with respect to the applicable credit described in § 1.6417–1(d)(7) (in other words, the section 45X credit), and only if the pre-filing registration required by § 1.6417–5 was properly completed.

(e) *Election for electing taxpayers*—(1) *In general.* If an electing taxpayer makes an elective payment election under § 1.6417–2(b) with respect to any taxable year in which the electing taxpayer places in service a qualified clean hydrogen production facility for which a section 45V credit is determined, places in service a single process train at a qualified facility for which a section 45Q credit is determined, or produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) at a facility, respectively, the electing taxpayer will be treated as an applicable entity for purposes of making an elective payment election for such taxable year and during the election period described in paragraph (e)(3) of this section, but only with respect to the applicable credit property described in § 1.6417–1(e)(3), (5), or (7), as applicable, that is the subject of the election. The taxpayer must otherwise meet all requirements to earn the credit in the electing year and in each succeeding year during the election period described in paragraph (e)(3) of this section.

(2) *Election is per applicable credit property.* An elective payment election under § 1.6417–2(b) is made separately for each applicable credit property, which is, respectively, a qualified clean hydrogen production facility placed in service for which a section 45V credit is determined, a single process train placed in service at a qualified facility for which a section 45Q credit is determined, or a facility at which eligible components are produced for which a section 45X credit is determined. An electing taxpayer may only make one election with respect to any specific applicable credit property.

(3) *Election period*—(i) *In general.* Except as provided in paragraph (e)(3)(ii) of this section, if an electing taxpayer makes an elective payment election under § 1.6417–2(b) with respect to applicable credit property described in § 1.6417–1(e)(3), (5), or (7) for which an applicable credit is determined under § 1.6417–1(d)(3), (5), or (7), the election period during which such election applies includes the taxable year for which the election is made and each of the four subsequent taxable years that end before January 1, 2033. The election period cannot be less than a taxable year but may be made for a taxable period of less than 12 months within the meaning of section 443 of the Code.

(ii) *Revocation of election.* An electing taxpayer may, during a subsequent year of the election period described in paragraph (e)(3)(i) of this section, revoke the elective payment election with respect to an applicable credit property described in § 1.6417–1(e)(3), (5), or (7), in accordance with forms and instructions. *See* § 601.602 of this chapter. Any such revocation, if made, applies to the taxable year for which the revocation is made (which cannot be less than a taxable year but may be made for a taxable period of less than 12 months as described in section 443 of the Code) and each subsequent taxable year within the election period. Any such revocation may not be subsequently revoked.

(4) *No transfer election under section 6418(a) permitted while an elective payment election is in effect.* No transfer election under section 6418(a) may be made by an electing taxpayer with respect to any applicable credit under § 1.6417–1(d)(3), (5), or (7) determined with respect to applicable credit property described in § 1.6417–1(e)(3), (5), or (7) during the election period for that applicable credit property. However, if the election period is no longer in effect with respect to an applicable credit property, any credit determined with respect to such applicable credit property can be transferred pursuant to a transfer election under section 6418(a), as long as the taxpayer meets the requirements of section 6418 and the 6418 regulations.

(f) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§ 1.6417–1 through 1.6417–4 and 1.6417–6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.6417–4 Elective payment election for electing taxpayers that are partnerships or S corporations.

(a) *In general.* In the case of any applicable credit determined with respect to any applicable credit property described in § 1.6417–1(e)(3), (5), or (7) that is held directly (or treated as held directly because it is held by a disregarded entity) by an electing taxpayer that is a partnership or S corporation, any elective payment election under § 1.6417–2(b) must be made by the partnership or S corporation.

(b) *Elections.* If an electing taxpayer that is a partnership or S corporation makes an elective payment election under § 1.6417–2(b) with respect to any taxable year in which the electing taxpayer places in service applicable credit property described in § 1.6417–1(e)(3) or (5), or produces, after December 31, 2022, eligible components (as defined in section 45X(c)(1)) at an applicable credit property described in § 1.6417–1(e)(7), the electing taxpayer will be treated as an applicable entity for purposes of making an elective payment election for such taxable year and during the election period described in § 1.6417–3(e)(3), but only with respect to the applicable credit property described in § 1.6417–1(e)(3), (5), or (7), respectively, that is the subject of the election. In addition, the taxpayer must otherwise meet all requirements to earn the credit in the electing year and in each succeeding year during the election period described in § 1.6417–3(e)(3).

(c) *Effect of election*—(1) *In general.* If a partnership or S corporation electing taxpayer makes an elective payment election, with respect to the section 45V, 45Q, or 45X credit—

(i) The Internal Revenue Service will make a payment to such partnership or S corporation equal to the amount of such credit, determined in accordance with paragraph (d) of this section (unless the partnership or S corporation owes a Federal tax liability, in which case the payment may be reduced by such tax liability);

(ii) Before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year;

(iii) Any amount with respect to which such election is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code;

(iv) A partner's distributive share of such tax exempt income is equal to such partner's distributive share of the otherwise applicable credit for each taxable year, as determined under § 1.704–1(b)(4)(ii);

(v) An S corporation shareholder's pro rata share (as determined under section 1377(a) of the Code) of such tax exempt income for each taxable year (as determined under sections 444 and

1378(b) of the Code) is equal to the S corporation shareholder's pro rata share (as determined under section 1377(a)) of the otherwise applicable credit for each taxable year; and

(vi) Such tax exempt income resulting from such election is treated as received or accrued, including for purposes of sections 705 and 1366, as of the date the applicable credit is determined with respect to the partnership or S corporation. (such as, for investment credit property, the date the property is placed in service).

(2) *Electing partnerships in tiered structures.* If a partnership (upper-tier partnership) is a direct or indirect partner of a partnership that makes an elective payment election (electing partnership) and directly or indirectly receives an allocation of tax exempt income resulting from the elective payment election made by the electing partnership, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to the partners' distributive shares of the otherwise applicable credit as provided in paragraph (c)(1)(iv) of this section.

(3) *Character of tax exempt income.* Tax exempt income resulting from an elective payment election by an S corporation or a partnership is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A) of the Code. As such, the tax exempt income is not treated as passive income to any partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

(d) *Determination of amount of the credit*—(1) *In general.* In determining the amount of an applicable credit that will result in a payment under paragraph (c)(1)(i) of this section, the partnership or S corporation must compute the amount of the applicable credit allowable as if an elective payment election were not made. Because a partnership or S corporation is not subject to sections 38(b) and (c) and 469 (that is, those sections apply at the partner or S corporation shareholder level), the amount of applicable credit determined by a partnership or S corporation is not subject to limitation by those sections. In addition, because the only applicable credits with respect to which a partnership or S corporation may make an elective payment election are not investment credits under section 46 of the Code, sections 49 and 50 of the code do not apply to limit the amount of the applicable credits.

(2) *Example.* The rules of this paragraph (d) are illustrated in the following example. A and B each contributed cash to P, a calendar-year partnership, for the purpose of manufacturing clean hydrogen at V, a qualified clean hydrogen facility that meets the definition of section 45V(c)(3). The partnership agreement provides that A and B share equally in all items of income, gain, loss, deduction and credit of P. P completes the pre-filing registration process with respect to the section 45V credit at V for 2023 in accordance § 1.6417–5. P places V in service in 2023. P timely files its 2023 Form 1065 and properly makes the elective payment election in accordance with §§ 1.6417–2(b),1.6417–3, and 1.6417–4. On its Form 1065, P properly determined that the amount of the section 45V credit with respect to the clean hydrogen produced at V for 2023 is $100,000. The IRS processes P's return and makes a $100,000 payment to P. Before determining A's and B's distributive shares, P reduces the credit to zero. While the $100,000 section 45V credit is deemed to have been allowed to P for 2023 for any other purpose under this title, the credit is not allocated or otherwise allowed to its partners. The $100,000 is treated as tax exempt income for purposes of section 705 and is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). P allocates the tax exempt income from the elective payment election proportionately among the partners based on each partner's distributive share of the otherwise eligible section 45V credit as determined under § 1.704–1(b)(4)(ii). Under that section, if partnership receipts or expenditures give rise to a credit, the partner's interest in the partnership with respect to such credit is in the same proportion as such partners' distributive shares of such receipt, loss, or deduction. Section 45V credits arise based on the amount of clean hydrogen produced at a facility. Under the partnership agreement, A and B share all items equally. Thus, A and B will each be allocated $50,000 of tax exempt income for 2023. P will continue to be treated as an applicable entity with respect to V for taxable years 2024–2027 unless P revokes its election in accordance with § 1.6417–3(e)(3)(ii). At the end of 2023, A and B increase their respective tax bases in their partnership interest and capital accounts by $50,000 each (that is, their share of the $100,000 of tax exempt income).

(e) *Partnerships subject to subchapter C of chapter 63.* For the application of subchapter C of chapter 63 of the Code to section 6417, *see* § 301.6241–7 of this chapter.

(f) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§ 1.6417–1 through 1.6417–4 and 1.6417–6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.6417–5 Additional information and registration.

(a) *Pre-filing registration and election.* An applicable entity or electing taxpayer is required to satisfy the pre-filing registration requirements in paragraph (b) of this section as a condition of, and prior to, making an elective payment election. An applicable entity or electing taxpayer must use the pre-filing registration process to register itself as intending to make the elective payment election, to list all applicable credits it intends to claim, and to list each applicable credit property that contributed to the determination of such credits as part of the pre-filing submission (or amended submission). An applicable entity or electing taxpayer that does not obtain a registration number under paragraph (c)(1) of this section or report the registration number on its annual tax return, as defined in § 1.6417–1(b), pursuant to paragraph (c)(5) of this section with respect to an otherwise applicable credit property, is ineligible to receive any elective payment amount with respect to the amount of any credit determined with respect to that applicable credit property. However, completion of the pre-filing registration requirements and receipt of a registration number does not, by itself, mean the applicable entity or electing taxpayer is eligible to receive a payment with respect to the applicable credits determined with respect to the applicable credit property.

(b) *Pre-filing registration requirements*—(1) *Manner of pre-filing registration.* Unless otherwise provided in guidance, an applicable entity or electing taxpayer must complete the pre-filing registration process electronically through the IRS electronic portal and in accordance with the instructions provided therein.

(2) *Pre-filing registration and election for members of a consolidated group.* A member of a consolidated group is required to complete pre-filing registration as a condition of, and prior to, making an elective payment election. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(3) *Timing of pre-filing registration.* An applicable entity or electing taxpayer must satisfy the pre-filing registration requirements of this paragraph (b) and receive a registration number under paragraph (c) of this section prior to making an elective payment election under § 1.6417–2(b) on the applicable entity's or electing taxpayer's annual tax return for the taxable year at issue.

(4) *Each applicable credit property must have its own registration number.* An applicable entity or electing taxpayer must obtain a registration number for each applicable credit property with respect to which it intends to make an elective payment election.

(5) *Information required to complete the pre-filing registration process.* Unless modified in future guidance, an applicable entity or electing taxpayer must provide the following information to the IRS to complete the pre-filing registration process:

(i) The applicable entity's or electing taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity.

(ii) Any additional information required by the IRS electronic portal, such as information regarding the taxpayer's exempt status under section 501(a) of the Code; that the applicable entity is a political subdivision of a State, the District of Columbia, or a U.S. territory, or subdivision of an Indian tribal government; or that the applicable entity is an agency or instrumentality of a State, the District of Columbia, an Indian tribal government, or a U.S. territory.

(iii) The taxpayer's taxable year.

(iv) The type of annual tax return(s) normally filed by the applicable entity or electing taxpayer, or that the applicable entity or electing taxpayer does not normally file an annual tax return with the IRS.

(v) The type of applicable credit(s) for which the applicable entity or electing taxpayer intends to make an elective payment election.

(vi) For each applicable credit, each applicable credit property that the applicable entity or electing taxpayer intends to use to determine the credit for which the applicable entity or electing taxpayer intends to make an elective payment election.

(vii) For each applicable credit property listed in paragraph (b)(4)(vi) of this section, any further information required by the IRS electronic portal, such as—

(A) The type of applicable credit property;

(B) Physical location (that is, address and coordinates (longitude and latitude) of the applicable credit property);

(C) Supporting documentation relating to the construction or acquisition of the applicable credit property (such as State, District of Columbia, Indian tribal, U.S. territorial, or local government permits to operate the applicable credit property; certifications; evidence of ownership that ties to a land deed, lease, or other documented right to use and access any land or facility upon which the applicable credit property is constructed or housed; U.S. Coast Guard registration numbers for offshore wind vessels; and the vehicle identification number of an eligible clean vehicle with respect to which a section 45W credit is determined);

(D) The beginning of construction date and the placed in service date of the applicable credit property,

(E) If an investment-related credit property (as defined § 1.6417–2(c)(3)), the source of funds the taxpayer used to acquire the property; and

(F) Any other information that the applicable entity or electing taxpayer believes will help the IRS evaluate the registration request.

(viii) The name of a contact person for the applicable entity or electing taxpayer. The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either possess legal authority to bind the applicable entity or electing taxpayer or must provide a properly executed power of attorney on Form 2848, *Power of Attorney and Declaration of Representative.*

(ix) A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant.

(x) Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section that is provided in guidance.

(c) *Registration number*—(1) *In general.* The IRS will review the information provided and will issue a separate registration number for each applicable credit property for which the applicable entity or electing taxpayer provided sufficient verifiable information.

(2) *Registration number is only valid for one taxable year.* A registration number is valid only with respect to the applicable entity or electing taxpayer that obtained the registration number under this section and only for the taxable year for which it is obtained.

(3) *Renewing registration numbers.* If an elective payment election will be made with respect to an applicable credit property for a taxable year after a registration number under this section has been obtained, the applicable entity or electing taxpayer must renew the registration for that subsequent taxable year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.

(4) *Amendment of previously submitted registration information if a change occurs before the registration number is used.* As provided in instructions to the pre-filing registration portal, if specified changes occur with respect to one or more applicable credit properties for which a registration number has been previously obtained but not yet used, an applicable entity or electing taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts. For example, if the owner of a facility previously registered for an elective payment election for applicable credits determined with respect to that facility and the facility undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner of the facility must amend the original registration to disassociate its EIN from the applicable credit property and the new owner must submit separately an original registration (or if the new owner previously registered other credit properties, must amend its original registration) to associate the new owner's EIN with the previously registered applicable credit property. If the change of ownership is with respect to an electing taxpayer, then the 5-year election period will continue despite the change in ownership.

(5) *Registration number is required to be reported on the return for the taxable year of the elective payment election.* The applicable entity or electing taxpayer must include the registration number of the applicable credit property on its annual tax return as provided in § 1.6417–2(b) for the taxable year. The IRS will treat an elective payment election as ineffective with respect to an applicable credit determined with respect to an applicable credit property for which the applicable entity or electing taxpayer does not include a valid registration number that was assigned to that particular taxpayer

during the pre-registration process on the annual tax return.

(d) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024.

§ 1.6417–6 Special rules.

(a) *Excessive payment*—(1) *In general.* In the case of any elective payment amount that the IRS determines constitutes an excessive payment, the tax imposed on such entity by chapter 1, regardless of whether such entity or taxpayer would otherwise be subject to chapter 1 tax, for the taxable year in which such determination is made will be increased by an amount equal to the sum of—

(i) The amount of such excessive payment, plus

(ii) An amount equal to 20 percent of such excessive payment.

(2) *Reasonable cause.* The amount described in paragraph (a)(1)(ii) of this section will not apply to an applicable entity or electing taxpayer if the applicable entity or electing taxpayer demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause.

(3) *Excessive payment defined.* For purposes of this section, the term *excessive payment* means, with respect to an applicable credit property for which an elective payment election is made under § 1.6417–2(b) for any taxable year, an amount equal to the excess of—

(i) The amount treated as a payment under § 1.6417–2(a)(1)(i) or (a)(2)(i), or the amount of the payment made pursuant to § 1.6417–2(a)(2)(ii), with respect to such applicable credit property for such taxable year, over

(ii) The amount of the credit that, without application of this section, would be otherwise allowable under the Code (as determined pursuant to § 1.6417–2(c) and (e) or § 1.6417–4(d)(1) and (3), and without regard to the limitation based on tax in section 38(c)) with respect to such applicable credit property for such taxable year. For purposes of this section, the amount of such credit that would be otherwise allowable is the amount claimed on an original or amended return, including any administrative adjustment request under section 6227.

(4) *Example.* This example illustrates the principles of this paragraph (a). B, an instrumentality of State M, places in service in 2023 facility F, which is eligible for the energy credit determined under section 48. B properly completes the pre-filing registration as an applicable entity that will earn the energy credit from F in accordance with § 1.6417–5, and receives a registration number for F. B timely files its 2023 Form 990–T, properly providing the registration number for F and otherwise complying with § 1.6417–2(b). On its Form 990–T, B calculates that the amount of energy credit determined with respect to F is $100,000 and that the net elective payment amount is $100,000. B receives a refund in the amount of $100,000. In 2025, the IRS determines that the amount of energy credit properly allowable to B in 2023 with respect to F (as determined pursuant to § 1.6417–2(c) and (e) and without regard to the limitation based on tax in section 38(c)) was $60,000. B is unable to show reasonable cause for the difference. The excessive payment amount is $40,000 ($100,000 treated as a payment − $60,000 allowable amount). In 2025, the tax imposed under chapter 1 on B is increased in the amount of $48,000 ($40,000 + (20% * $40,000).)

(b) *Basis reduction and recapture*—(1) *In general.* Rules similar to the rules of section 50 (without regard to section 50(b)(3) and (4)(A)(i)) apply for purposes of this section.

(2) *Reporting recapture.* Any reporting of recapture is made on the annual tax return of the applicable entity or electing taxpayer in the manner prescribed by the IRS in any guidance, along with supplemental forms such as Form 4255, *Recapture of Investment Credit.*

(3) *Example.* This example illustrates the principles of this paragraph (b). In December 2023, G, a government entity, places in service P, which is energy property eligible for the energy credit determined under section 48 (section 48 credit). G properly completes the pre-filing registration in accordance with § 1.6417–5 as an applicable entity to make an election under section 6417 for 2023. G timely files its 2023 Form 990–T in 2024, properly making the elective payment election in accordance with § 1.6417–2 for a section 48 energy credit determined with respect to P. On its Form 990–T, G properly determines that the amount of section 48 credit determined with respect P is $100,000 and that its net elective payment amount is $100,000. The IRS sends G a $100,000 refund. Pursuant to section 50(c), G reduces its basis in P by $50,000. In July 2025, P ceases to be investment credit property with respect to G. Because this occurs before the close of the recapture period set forth in section 50, section 50(a)(1)(A) provides that the tax under chapter 1 for 2025 is increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years that would have resulted solely from reducing to zero any credit determined under subpart E of part IV of subchapter A of chapter 1 with respect to such property. Because P ceased to be investment credit property within 2 full years after P was placed in service, section 50(a)(1)(B) provides that the recapture percentage is 80%. G must properly report the recapture event in 2025, paying an $80,000 tax. Because G is a government entity, G reports the recapture event on a Form 990–T or any Form provided in further guidance, along with supplemental forms such as Form 4255, *Recapture of Investment Credit.* G's basis in P is increased by $40,000.

(c) *Mirror code territories.* Pursuant to section 6417(f) of the Code, section 6417 and the section 6417 regulations are not treated as part of the income tax laws of the United States for purposes of determining the income tax law of any U.S. territory with a mirror code tax system (as defined in section 24(k) of the Code), unless such U.S. territory elects to have section 6417 and the section 6417 regulations be so treated. The applicable territory tax authority for a U.S. territory determines whether such an election has been made.

(d) *Partnerships subject to subchapter C of chapter 63 of the Code. See* § 301.6241–7(j) of this chapter for rules applicable to payments made to partnerships subject to subchapter C of chapter 63 of the Code for a partnership taxable year.

(e) *Applicability date.* This section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers, however, may choose to apply the rules of §§ 1.6417–1 through 1.6417–4 and 1.6417–6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.6417–5T [Removed]

■ **Par. 3.** Section 1.6417–5T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 4.** The authority citation for part 301 is amended by revising the entries for §§ 301.6241–1 and 301.6241–7 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6241–1 also issued under sections 48D(d), 6241, and 6417.

* * * * *

Section 301.6241–7 also issued under sections 48D(d), 6241, and 6417.

* * * * *

■ **Par. 5.** Section 301.6241–1 is amended by:

■ a. Adding a sentence after the second sentence in paragraph (a)(6)(iii); and

■ b. Adding a sentence to the end of paragraph (b)(1).

The additions read as follows:

§ 301.6241–1 Definitions.

(a) * * *

(6) * * *

(iii) * * * Notwithstanding the previous two sentences, any tax, penalty, addition to tax, or additional amount imposed on the partnership under chapter 1 is an item or amount with respect to the partnership. * * *

* * * * *

(b) * * *

(1) * * * The third sentence of paragraph (a)(6)(iii) of this section applies to partnership taxable years ending on or after June 21, 2023.

* * * * *

■ **Par. 6.** Section 301.6241–7 is amended by:

■ a. Redesignating paragraph (j) as paragraph (k);

■ b. Adding new paragraph (j);

■ c. Revising the first sentence of newly redesignated paragraph (k)(1); and

■ d. Adding paragraph (k)(3).

The additions and revisions read as follows:

§ 301.6241–7 Treatment of special enforcement matters.

* * * * *

(j) *Elections resulting in payments to a partnership.* The IRS may adjust any election that results or could result in a payment to the partnership in lieu of a Federal tax credit or deduction without regard to subchapter C of chapter 63. The IRS may also make determinations, without regard to subchapter C of chapter 63, about the payment itself as well as any partnership-related item relevant to adjusting the election or the payment.

* * * * *

(k) * * *

(1) * * * Except as provided in paragraphs (k)(2) (relating to paragraph (b) of this section) and (k)(3) of this section (relating to paragraph (j) of this section), this section applies to partnership taxable years ending on or after November 20, 2020. * * *

* * * * *

(3) *Elections resulting in payments to a partnership.* Paragraph (j) of this section applies to taxable years ending on or after June 21, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: February 27, 2024.

Aviva Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–04604 Filed 3–5–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9989]

RIN 1545–BQ75

Elective Payment of Advanced Manufacturing Investment Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning the elective payment election of the advanced manufacturing investment credit under the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022. The regulations describe rules for the elective payment election, including special rules applicable to partnerships and S corporations, repayment of excessive payments, basis reduction and recapture, and the IRS pre-filing registration process that taxpayers wanting to make the elective payment election are required to follow. These final regulations affect taxpayers eligible to make the elective payment election of the advanced manufacturing investment tax credit in a taxable year. This document also removes temporary regulations published on June 21, 2023 in the **Federal Register**.

DATES:

Effective date: These regulations are effective May 10, 2024.

Applicability dates: For dates of applicability see § 1.48D–6(h).

FOR FURTHER INFORMATION CONTACT: Concerning these final regulations, Lani M. Sinfield of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 48D was added to the Internal Revenue Code (Code) on August 9, 2022, by section 107(a) of the CHIPS Act of 2022 (CHIPS Act), which was enacted as Division A of the CHIPS and Science Act of 2022, Public Law 117–167, 136 Stat. 1366, 1393. Section 48D established the advanced manufacturing investment credit (section 48D credit) and section 48D(d) allows taxpayers (other than partnerships and S corporations) to elect to treat the amount of the section 48D credit determined under section 48D(a) as a payment against their Federal income tax liabilities. Section 48D(d) also provides special rules relating to elective payments to partnerships and S corporations and directs the Secretary of the Treasury or her delegate (Secretary) to provide rules for making elections under section 48D and to require information or registration necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under section 48D. Section 48D applies to qualified property placed in service after December 31, 2022, and, for any property the construction of which began prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection of such qualified property after August 9, 2022 (the date of enactment of the CHIPS Act). See section 107(f)(1) of the CHIPS Act.

On March 23, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 17451) a notice of proposed rulemaking (REG–120653–22), which contained proposed definitions and rules to implement the general provisions relating to the section 48D credit under proposed §§ 1.48D–1 through 1.48D–6 and the special 10-year recapture rule under proposed § 1.50–2 (March 2023 proposed regulations). Proposed §§ 1.48D–1 through 1.48D–5 and § 1.50–2 addressed who would be an eligible taxpayer, what would qualify as qualified property or an advanced manufacturing facility, whether the beginning of construction requirement would be met, and what would qualify as a significant transaction involving a material expansion of semiconductor manufacturing capacity in a foreign country of concern for purposes of the special 10-year recapture rule under section 50(a)(3) of the Code. In addition, § 1.48D–6 of the March 2023 proposed regulations set forth the general requirements that would apply for making an elective payment election under section 48D(d), and the specific requirement that an eligible taxpayer, partnership, or S corporation would need to comply with the registration procedures in proposed § 1.48D–6(c)(2)

as a condition of, and prior to, any amount being treated as a payment under section 48D(d)(1) or (d)(2)(A)(i)(I). However, the March 2023 proposed regulations under proposed § 1.48D–6(c)(2) reserved on the procedures and additional information required for completing the pre-filing registration process.

Over 40 comments were received by the Treasury Department and the IRS in response to the March 2023 proposed regulations. A public hearing on the March 2023 proposed regulations was held on July 26, 2023. Comments and testimony regarding proposed §§ 1.48D–1 through 1.48D–5 and 1.50–2 will be addressed in a forthcoming Treasury decision containing final regulations under those provisions.

On June 21, 2023, the Treasury Department and the IRS published proposed regulations under section 48D(d) (REG–105595–23) in the **Federal Register** (88 FR 40123) revising proposed § 1.48D–6 of the March 2023 proposed regulations (June 2023 proposed regulations) to set forth the additional information and registration requirements for taxpayers planning to make an elective payment election under section 48D(d) to treat the amount of the section 48D credit as a payment of Federal income tax, or in the case of a partnership or S corporation, to receive a payment in the amount of such credit. The June 2023 proposed regulations also described rules for the elective payment election, including special rules applicable to partnerships and S corporations, repayment of excessive payments, and basis reduction and recapture. Also on June 21, 2023, the Treasury Department and the IRS published temporary regulations (T.D.9975) (temporary regulations) in the **Federal Register** (88 FR 40086) that implement the prefiling registration process described in § 1.48D–6(b) of the June 2023 proposed regulations. The temporary regulations apply to property placed in service on or after December 31, 2022, and during a taxable year ending on or after June 21, 2023. Twelve commenters provided comments to the Treasury Department and the IRS in response to the June 2023 proposed regulations, and a public hearing was held on August 24, 2023.

This Treasury decision removes the temporary regulations effective on May 10, 2024 and adopts § 1.48D–6 of the June 2023 proposed regulations with certain modifications after full consideration of all the comments and testimony received on § 1.48D–6 of the March 2023 proposed regulations and June 2023 proposed regulations, as described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations set forth in § 1.48D–6 retain the basic approach and structure of the June 2023 proposed regulations with certain revisions in response to comments received.

The Treasury Department and the IRS have refined and clarified certain aspects of the June 2023 proposed regulations in these final regulations. Specifically, the final regulations modify the limitations for making an elective payment election in proposed § 1.48D–6(c)(2), modify the denial of double benefit rule in proposed § 1.48D–6(e), and provide an interim rule for determining a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) and proposed § 1.48D–6(d)(2).

II. Elective Payment Election

One commenter requested that the final regulations clarify whether a taxpayer is considered to have made an elective payment election upon completing the pre-filing registration requirement. The commenter noted that proposed § 1.48D–6(b)(7)(iv) states in relevant part, that, if an eligible taxpayer that is the owner of an advanced manufacturing facility previously registered for an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility, and if the facility undergoes a change in ownership such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, then the original owner of the advanced manufacturing facility must amend the original registration to disassociate its EIN from the advanced manufacturing facility. The commenter suggested that this sentence from proposed § 1.48D–6(b)(7)(iv) creates some confusion as to whether the elective payment election is made pursuant to the pre-filing registration as opposed to on the taxpayer's original tax return as provided in proposed § 1.48D–6(c). The commenter further suggested that an example would be helpful to demonstrate a taxpayer's ability to make an elective payment election per facility not per the taxpayer. The commenter explained that there could be instances in which the taxpayer would make an elective payment election for one advanced manufacturing facility versus another advanced manufacturing facility.

The Treasury Department and the IRS have determined that a modification to the proposed rule is appropriate to clarify that a taxpayer makes an elective payment election pursuant to section 48D(d)(1) in the time and manner required by § 1.48D–6(c) of the final regulations. Accordingly, proposed § 1.48D–(6)(b)(7)(iv) is revised in the final regulations to provide that the taxpayer registers the ''qualified investments in the advanced manufacturing facility or the advanced manufacturing facility'' as opposed to registering for ''an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility.'' Given this clarification, the Treasury Department and the IRS have determined that an example to demonstrate this point is not needed.

III. Pre-Filing Registration Requirement

A. Qualified Investment

Proposed § 1.48D–6(b)(5) would require a taxpayer to obtain a registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer with respect to which an elective payment election is made. Several commenters requested that the final regulations clarify the meaning of the term ''qualified investment'' in proposed § 1.48D–6(b)(5). Some commenters requested that the final regulations allow a taxpayer to obtain a registration number for an advanced manufacturing facility. Other commenters requested that the final regulations allow a taxpayer to obtain a registration number for a single advanced manufacturing facility project that would cover all qualified investments made with respect to such advanced manufacturing facility project within the taxable year. Another commenter requested that the final regulations allow a taxpayer to obtain a registration number for all qualified investments placed in service as a part of an advanced manufacturing facility during the taxable year, or for any reasonable grouping of investments or assets.

Section 48D(a) provides that the section 48D credit for any taxable year is an amount equal to 25 percent of the qualified investment for such taxable year with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(b) generally provides that the qualified investment with respect to any advanced manufacturing facility for any taxable

year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility. Consistent with section 48D(a), proposed § 1.48D–6(b)(5) would require a taxpayer to obtain a registration number for each qualified investment in an advanced manufacturing facility as a prerequisite to making an elective payment election with respect to the section 48D credit determined with respect to such qualified investment for the taxable year. Consequently, a taxpayer must obtain a registration number for any qualified property placed in service during the taxable year. A taxpayer is able to register a single property, properties, or an advanced manufacturing facility. However, a taxpayer must be the owner of an advanced manufacturing facility to register the facility. A taxpayer that places in service qualified property that is part of an advanced manufacturing facility must register the qualified property if such taxpayer is not the owner of the facility. The proposed regulations provide flexibility to taxpayers in determining the appropriate properties, or advanced manufacturing facility, for which it must obtain a registration number.

Section 48D(d)(2)(E) provides that the Secretary may require additional information or registration as a condition of, and prior to, an amount being treated as a payment under section 48D(d)(1) to prevent duplication, fraud, improper payments, or excessive payments. A rule allowing a taxpayer to register a single advanced manufacturing facility project, which could include multiple qualified investments in more than one advanced manufacturing facility, would create an administrative burden on the IRS because the determination of the section 48D credits with respect to the separate facilities could be different. Such a rule could thus increase the risk of duplication, fraud, improper payments, or excessive payments. For the foregoing reasons, these final regulations do not adopt these recommendations. The Treasury Department and the IRS recommend that taxpayers consult Form 3468, *Investment Credit,* and Form 3800, *General Business Credit,* and those form's accompanying instructions, as well as the current version of Publication 5884, *Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool User Guide and Instructions,* for the latest guidance on the pre-filing registration process. Proposed § 1.48D–6(b)(7)(ii) would provide that a registration number is valid only for the taxable year for which it was obtained. Proposed § 1.48D–6(b)(7)(iii) would provide that a taxpayer must renew a previously obtained registration in a subsequent taxable year. A commenter requested that the final regulations allow a taxpayer to obtain one registration number that could be renewed over a period of several taxable years for all qualified progress expenditures in an advanced manufacturing facility. The Treasury Department and the IRS have determined that allowing a taxpayer to obtain one registration number that can be used for a period of several years for all qualified progress expenditures would increase the risk of duplication, fraud, improper payments or excessive payments. Accordingly, the requested change is not adopted.

B. Information Required To Complete the Pre-Filing Registration Process

Commenters recommended that the final regulations modify the information and documentation requirements in proposed § 1.48D–6(b). One commenter requested that the final regulations specify the ''additional information'' that may be required by the IRS electronic portal pursuant to proposed § 1.48D–6(b)(6)(ii) to ensure that taxpayers have clarity and time to prepare all necessary documentation. One commenter requested that the final regulations eliminate all ''open-ended'' categories that do not specify the types of information or documentation as in proposed § 1.48D–6(b)(6)(ii), (vi), (vi)(F), and (ix). The commenter also requested limiting the requirement for information on the beginning of construction and placed in service date in proposed § 1.48D–6(b)(6)(vi)(D). The commenter further requested that the final regulations eliminate or significantly limit the supporting document requirement in § 1.48D–6(b)(6)(vi)(C).

The pre-filing registration process has been designed to help prevent fraud and duplication, while also allowing for more efficient processing and payment upon filing of the return. The information requested is also that which a taxpayer claiming a section 48D credit should have available. Except for a taxpayer making a qualified progress expenditure election pursuant to section 48D(b)(5), a taxpayer must first place in service qualified property before the taxpayer may register the property with the intention of making an elective payment election. Maintaining this proposed requirement ensures that taxpayers are not completing pre-filing registration in an earlier year, before a credit can be determined. Therefore, these final regulations do not adopt these recommendations.

One commenter recommended that the final regulations include information reporting requirements similar to the information reporting requirements in § 1.48–4 (election of lessor to treat the lessee as having acquired investment credit property). More specifically, the commenter suggested that the information requirements should be satisfied when a taxpayer attaches a signed statement to its return that provides, for each unit of property for which an election is made, including a single advanced manufacturing facility, a description of the property, the basis of the property, the year when construction of the property began, and the placed in service date. The commenter also requested that, in the years after the filing of the initial statement, a taxpayer should be able to satisfy the information requirements by reporting changes to any information in the prior year's filed statement such as basis adjustments and any additional property with respect to which additional credits are claimed.

Consistent with section 48D(d)(2)(E), the final regulations provide for a pre-filing registration process that allows the IRS to verify certain information before the election is made and then to process the tax return on which the election is made with minimal delays. Similarly, the final regulations provide the time and manner for making an elective payment election that is consistent with the existing framework for claiming business tax credits; that is, the filing of the annual return including the completed source credit form and completed Form 3800. As previously noted, the pre-filing registration process has been designed to help prevent fraud and duplication, while also allowing for more efficient processing and payment upon filing of the return. For the foregoing reasons, the final regulations adopt the information requirements as proposed.

A commenter asked whether the IRA and CHIPS pre-filing registration portal could handle large files in order to satisfy the information requirements under proposed § 1.48D–6(b)(6)(vi)(C). The Treasury Department and the IRS did not intend for proposed § 1.48D–6(b)(6)(vi)(C) to require all supporting documentation to be provided during the pre-filing registration process. Rather, the intent was to require information sufficient to verify the taxpayer's qualified investment and provide examples of information that may be helpful in doing so. In response to the comment, these final regulations remove the word ''any'' from the

provision. The documentation to support the existence of a valid qualified investment will vary by the property or properties for which the credit is being claimed, and a registrant does not need to provide all information that may be available. However, to the extent the information provided is insufficient for purposes of the pre-filing registration process, the IRS may request further information. *See* Publication 5884.

Another commenter generally recommended that the final regulations ''could be slightly more specific in guiding taxpayers when determining their pre-filing eligibility,'' but did not include any particular recommendations for modifications to the proposed regulations. Consistent with section 48D(d)(2)(E), proposed § 1.48D–6(b) would provide the information and pre-filing registration requirements that the Secretary deems necessary and appropriate for purposes of preventing duplication, fraud, improper payments or excessive payments and which specify pre-filing eligibility. Accordingly, the final regulations do not include any modifications to the specifications for determining pre-filing eligibility.

C. Timing of the Pre-Filing Registration Process

Commenters requested that the final regulations clarify the timeframe for the IRS to review the registration information provided, and notify the taxpayer whether the registration requirements have or have not been satisfied. One commenter recommended that the final regulations: (1) allow the IRS 90 days to determine whether a taxpayer submitted sufficient information required to complete the pre-filing registration process, (2) provide a taxpayer with 14 days to correct the registration, and (3) allow the IRS 45 days to review the corrected information. Because the timeframe and procedures of the pre-filing registration process may be modified over time as both the IRS and taxpayers gain experience with it, these final regulations do not contain any such timeframe or procedure. Instead, the Treasury Department and the IRS recommend that taxpayers consult the current version of Publication 5884 for the latest guidance on the pre-filing registration process. As of February 2024, Publication 5884 states:

> Even though registration is not possible prior to the beginning of the tax year in which the credit will be earned, the IRS recommends that taxpayers register as soon as reasonably practicable during the tax year. The current recommendation is to submit the pre-filing registration at least 120 days prior to when the organization or entity plans to file its tax return. This should allow time for IRS review, and for the taxpayer to respond if the IRS requires additional information before issuing the registration numbers.

One commenter requested that the final regulations clarify the outcome of a missed registration with respect to a portion of a qualified investment. The commenter asked whether a missed registration for a portion of a qualified investment will impact a taxpayer's ability to make an election for the portion of the qualified investment for which registration was properly made and whether a taxpayer may claim a section 48D credit for the portion for which the registration was not properly made. This is a factual matter that cannot be addressed in these final regulations as it depends on the facts and circumstances of the qualified investment made by the taxpayer. However, as further described in part IV.B of this Summary of Comments and Explanation of Revisions, the final regulations provide that a taxpayer may take curative action for an ineffective election prior to the due date of the election (including extensions) by filing a superseding return.

No comments were received on the remaining proposed rules under § 1.48D–6(b). This Treasury decision therefore adopts those proposed regulations as final regulations.

IV. Time and Manner of Election

A. Qualified Progress Expenditures

Commenters requested that the final regulations clarify whether a taxpayer can make an elective payment election with respect to a section 48D credit determined pursuant to a qualified progress expenditure election. Section 48D(b)(5) provides that ''[r]ules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection [48D](a).'' Thus, a taxpayer has the ability to make a qualified progress expenditure election, as provided in § 1.46–5, to increase its qualified investment with respect to an advanced manufacturing facility for the taxable year by any qualified expenditures made during such taxable year. Section 48D(d)(1) allows a taxpayer to make an elective payment election with respect to a section 48D credit determined with respect to such taxpayer. Section 48D(d)(2) allows a partnership or S corporation to make an elective payment election under section 48D(d)(1). The statutory text of sections 48D(b)(5) and (d)(1) and (2) thus permit a taxpayer (or partnership or S corporation) to make an elective payment election with respect to a section 48D credit determined pursuant to a qualified progress expenditure election. For this reason, the Treasury Department and the IRS have determined that a clarification is not necessary in the final regulations. The Treasury Department and the IRS recommend that taxpayers consult the current version of Publication 5884 for the latest guidance on the pre-filing registration with respect to property for which the taxpayer makes a qualified progress expenditure election. As of February 2024, Publication 5884 states:

> If the registrant intends to elect payment for certain progress expenditures under IRC section 48D(b)(5), enter the date of the entity's last progress expenditure made during the tax year.

A commenter stated that a calendar-year taxpayer with qualifying progress expenditures made between August 9, 2022, and December 31, 2022, may not have sufficient time to successfully complete the pre-filing registration requirements as described in the proposed regulations to make a timely elective payment election on an original return. The IRA and CHIPS pre-filing registration portal opened on December 22, 2023. Thus, a calendar-year taxpayer with qualifying progress expenditures made between August 9, 2022, and December 31, 2022, would have been unable to complete the pre-filing registration requirements. In such cases, the taxpayer should anticipate that the tax return on which the elective payment election is made may undergo heightened scrutiny to mitigate the risk of fraud and duplication that pre-filing registration is intended to address before a payment is issued.

One commenter requested that the final regulations or other guidance provide guidance on the definitions of ''self-constructed'' versus ''non-self-constructed property'' and ''integrated unit'' for purposes of determining the construction period under § 1.46–5. Whether a property, including qualified property under section 48D(b)(2) and the section 48D regulations, is progress expenditure property is determined based on the facts known at the close of the first taxable year to which a progress expenditures election is made. Whether property is ''self-constructed'' versus ''non-self-constructed property'' or an ''integrated unit'' pursuant to § 1.46–5(k), (l) and (e)(3), respectively, is also a factual determination. Additional guidance on the definitions of ''self-constructed'' versus ''non-self-

constructed property'' and ''integrated unit,'' would inject significant complexity into the final regulations and likely cause additional uncertainty regarding the scope of those terms. Moreover, such guidance is beyond the scope of these final regulations. Accordingly, the final regulations do not address the modifications requested by the commenter.

B. Manner of Making the Election

A commenter requested that the final regulations clarify whether a taxpayer is ''released from the requirements of an elective payment election'' if the taxpayer completes pre-filing registration but chooses not to make the elective payment election. Proposed § 1.48D–6(c)(1) would provide, in part, that any elective payment election under section 48D(d)(1) must be made on the taxpayer's original return of tax (including a superseding return) filed not later than the due date (including extensions of time) for the taxable year for which the section 48D credit is determined. Proposed § 1.48D–6(b) would provide the requirements for pre-filing registration. Neither section 48D nor the proposed regulations would mandate that a taxpayer is required to make an elective payment election if the taxpayer successfully completed the pre-filing registration requirements set forth in proposed § 1.48D–6(b). As noted in Part II of this Summary of Comments and Explanation of Revisions, the final regulations modify proposed § 1.48D–(6)(b)(7)(iv) by clarifying that the taxpayer previously registered the ''advanced manufacturing facility'' as opposed to previously registering for ''an elective payment election for a section 48D credit determined with respect to that advanced manufacturing facility.'' For the foregoing reasons, the Treasury Department and the IRS have determined that no further clarification is necessary in the final regulations as requested by the commenter.

One commenter requested that the final regulations clarify that any additional information and supporting calculations required by any source credit form and Form 3800 may be submitted electronically and will be reviewed by the appropriate persons. Proposed § 1.48D–6(c)(1) would provide a manner for making an elective payment election that is consistent with the existing framework for claiming business tax credits; that is, the filing of the annual return including the completed source credit form and completed Form 3800 which may submitted electronically. The proposed regulations would provide for a pre-filing registration process that would allow the IRS to verify certain information before the election is made and then process the tax return on which the election is made with minimal delays. Additional guidance on this subject is beyond the scope of these final regulations.

Consistent with proposed § 1.48D–6(c)(1)(iv)(A), the final regulations require a taxpayer to include a statement on the taxpayer's original return (including a superseding return) attesting under the penalties of perjury that the taxpayer has not made an applicable transaction as defined in proposed § 1.50–2(b)(3) during the taxable year that the qualified property is placed in service. One commenter recommended that the statement whether the taxpayer has made an applicable transaction should be requested either at pre-filing registration or on the tax return. The commenter explained that including this requirement would allow the IRS and taxpayers to be proactive in preventing any unnecessary claiming of the section 48D credit or the taxpayer making an incorrect elective payment election. Section 48D(a) provides that the section 48D credit for any taxable year is determined with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(c) defines an eligible taxpayer, in part, as any taxpayer which has not made an applicable transaction (as defined in section 50(a)) during the taxable year. Requiring the statement on the taxpayer's return as opposed to during pre-filing registration is consistent with the requirements of sections 48D(a) and (c) and allows taxpayers sufficient time for such a determination while deterring erroneous elective payment elections.

One commenter requested clarification on superseding returns. Neither the Code nor regulations define a superseding return, but administrative IRS guidance provides that a superseding return is a return filed subsequent to the originally-filed return but before the due date for filing the return (including extensions). For example, if a taxpayer subject to an automatic extension files an original return on the due date and also files a subsequent return within the automatic extension period, the subsequent return would generally be considered a superseding return. If a return for a particular taxable year is originally filed after the due date (excluding extensions) but during the automatic extension period, then such return would be considered an original return. Unlike a superseding return, an amended return is a return filed subsequent to the originally filed or superseding return and filed after the due date for filing the return (including extensions).

The commenter stated that the reference to a superseding return seems to be an acknowledgment that some taxpayers will use a provisional tax return filed on the due date (before extensions) to hasten the election process. This commenter asked whether, if a taxpayer files a provisional return on March 15, 2024, and files a superseding return on September 15, 2024, the taxpayer would be treated as making payment against tax under section 48D(d)(2)(C) on March 15, 2024. The Treasury Department and the IRS note that the designation ''provisional'' return has no basis in the Code or regulations and accordingly, such returns are not treated differently by the IRS upon filing. Taxpayers are reminded that a tax return is signed under penalties of perjury that the return is true, correct, and complete. If an original return is filed on March 15, 2024, and contains a valid elective payment election, the taxpayer is treated as making a payment against tax on that day. A superseding return could increase or reduce the amount of the net elective payment election. If the amount is increased, the additional elective payment is treated as paid on the date the superseding return was filed. Taxpayers should be aware that filing a superseding return could result in a delay by the IRS in processing the additional elective payment amount. If the net elective payment amount is reduced because of the superseding return, the taxpayer could be subject to interest and, if the taxpayer fails to pay the difference with the superseding return, penalties.

The Treasury Department and the IRS have determined that clarification is needed to address situations in which a taxpayer intended to make an elective payment election but made a reporting error with respect to an element of a valid election (for example, miscalculating the amount of the credit on the original return or making a typographical error in the process of inputting a registration number), and to allow the taxpayer to correct any errors that would result in a disallowance of the election or to correct an excessive payment before an excessive payment determination is made by the IRS. Consistently, it is appropriate to allow taxpayers to correct errors that would result in a larger payment than indicated on the original return as long as such larger amount is accurate. As a result, these final regulations remove the words ''or revised'' in proposed § 1.48D–6(c)(2) and now state ''[n]o elective payment election may be made

for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code, although a numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary.'' This provision cannot be used to revoke an election or to make an election for the first time on an amended return. In addition, the taxpayer's original return, which must be signed under penalties of perjury, must contain all of the information, including a registration number, required by these final regulations. To properly correct an error on an amended return or in an administrative adjustment request, a taxpayer must have made an error in the information included on the original return such that there is a substantive item to correct; a taxpayer cannot correct an item that is left blank or an item that is described as being ''available upon request.''

These final regulations also modify the proposed regulations to permit an extension of time under § 301.9100–2(b) to allow for an automatic six-month extension of time from the due date of the return (excluding extensions) to make the election prescribed in section 48D(d). The elective payment election is a statutory election in that its due date is prescribed by statute. As such, the section 9100 relief procedures apply only insofar as the late election is being filed pursuant to § 301.9100–2(b), which requires that the taxpayer timely filed its return for the year the election should have been made. Relief under this provision will apply only to taxpayers that have not received an extension of time to file a return after the original due date (excluding extensions). Taxpayers eligible for this relief must take corrective action under § 301.9100–2(c) and follow the procedural requirements of § 301.9100–2(d).

No comments were received on the remaining proposed rules regarding the manner and time of making an elective payment election under § 1.48D–6(c). This Treasury decision therefore adopts those proposed regulations as final regulations.

C. Timing of Payment

Multiple commenters advocated that elective payment amounts be permitted to be used against estimated tax payments or that the Treasury Department and the IRS allow for quarterly elections and payments even though the elective payment is not deemed effective until the later of the due date or filing date of the tax return. Another commenter opined that the IRS could use its authority under section 48D(d)(6) to allow taxpayers to make and receive quarterly elections and payments, align quarterly elections with quarterly returns, and replicate the quarterly excise tax reporting mechanism similar to rules under sections 6426 and 6427, allowing taxpayers to claim payments every quarter.

The distinction between estimated tax installments (which are the obligation of the taxpayer to calculate) versus an end of year estimated tax penalty (that may result if the taxpayer's calculations are not correct and/or if the taxpayer's annual tax liability is not paid on the due date for the return, including a ''payment'' that is made through an elective payment election) appeared to confuse several commenters. For example, one commenter stated that proposed § 1.48D–6(e)(2) could be interpreted to permit a taxpayer to calculate their estimated tax installments and any underpayment by considering properly determined refundable credits in making quarterly estimated tax payments, even though the elective payment amount is not deemed to be paid until the later of the due date or filing date of the tax return.

Commenters asked that section 48D credits be considered to have been estimated tax payments, resulting in no tax liability at the end of the year or, at a minimum, that the final regulations waive estimated tax penalties related to an elective payment election. In other words, commenters requested clarification that the elective payment election may be applied as a reduction to any quarterly estimated tax payments (without penalty) and to offset any taxes that are reported on the taxpayer's income tax return for any taxable year in which those elections are in effect.

These final regulations do not adopt these recommendations. Section 48D(d)(2)(C) contemplates a single payment and clearly states the timing of when the payment is treated as made, which at the earliest, is the return due date (determined without regard to extensions). In that sense, payments made under section 48D are no different than other kinds of payments a taxpayer may make as part of filing a timely return (excluding extensions) or making a payment with a timely filed application for extension. Taxpayers can adequately determine whether their quarterly estimated payments are sufficient based on their projected income and by considering any expected and properly determined credit. For the same reasons, the section 48D credit may not be included to calculate estimated tax for Form 4466, which, under section 6425(a)(1) of the Code must be filed after the close of a corporation's taxable year, on or before the 15th day of the fourth month following the close of such taxable year, and prior to the filing of the corporation's return for such taxable year. Comments requesting examples showing how the full amount of the section 48D credit reduces tax under section 6655 are outside the scope of these final regulations. For the sake of clarity, however, the final regulations modify the examples under § 1.48D–6(e)(4) to better reflect the conclusion that a taxpayer that files its return after the due date for filing (excluding extensions) may also be subject to a penalty under section 6651(a)(2) for the failure to timely pay tax, even if it did not owe tax after applying the net elective payment amount against its net tax liability.

One commenter stated that in the absence of quarterly elections and payments, the final regulations should provide a mechanism for a corporate partner to reduce quarterly estimated taxes for credits generated through partnerships; otherwise, the commenter thought it would be penalizing taxpayers that operate their businesses through partnerships. The Treasury Department and the IRS note that the treatment of partners in a partnership (or shareholders of an S corporation) that makes an elective payment election is different from the treatment of a taxpayer that directly makes an elective payment election. This is a result of the special rules in section 48D(d)(2)(A) that require an elective payment election for section 48D credits determined with respect to any property held directly by a partnership to be made by the partnership. An elective payment election made by a partnership is not reduced by the Federal tax liabilities of its partners. Instead, it is only reduced by any partnership level Federal tax liability. If partners were allowed to reduce their quarterly estimated taxes for section 48D credits determined with respect to property held by a partnership to which the partnership makes an elective payment election, then the amount of the elective payment made to the partnership should be reduced by the partners' corresponding quarterly estimated tax liabilities. Otherwise, the partners would receive a windfall because the same section 48D credit would be used to both reduce the partners' estimated tax payments and

generate an elective payment to the partnership. Section 48D(d)(2)(A) does not allow for such a mechanism. Instead, section 48D(d)(2)(A) provides that if a partnership makes an elective payment election, any elective payment amount is treated as tax exempt income for purposes of section 705 and a partner's distributive share of such tax exempt income is equal to such partner's distributive share of the section 48D credit otherwise available for each taxable year. As the elective payment election results in a section 48D credit being treated as tax exempt income rather than a credit, it is inappropriate to adopt a rule allowing the partners to treat the same amount as a credit for estimated tax purposes. Thus, the final regulations do not adopt the commenter's recommendation of a rule allowing corporate (or any other) partners to reduce quarterly estimated taxes for section 48D credits determined with respect to property held through a partnership that makes an elective payment election.

Commenters asked that the final regulations specify a timeframe within which a taxpayer will receive an elective payment amount. Commenters also requested that the IRS should be required to process the elective payment within 45 days from the date the election is filed, similar to the quick refund process under Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax.* The Treasury Department and the IRS decline to specify a particular time within which an elective payment election will be processed. Several factors, including the volume of returns on which elective payment elections are made, and whether any particular return contains complete and accurate information, will affect processing time. However, as stated in this preamble, the pre-filing registration is intended to allow the IRS to verify certain information about a taxpayer in a timely manner while mitigating the risk of fraud or improper payments and then process the annual tax return with minimal delays.

A commenter requested that the final regulations clarify whether refunds greater than $5 million will require review by the Joint Committee on Taxation. The commenter noted that the review is not necessary because an elective payment is not a refund of tax based on any position taken on the tax return. This comment is outside the scope of these final regulations.

V. Special Rules for Partnerships and S Corporations

Commenters requested that the final regulations allow a partnership to determine a partner's distributive share of the section 48D credit without regard to § 1.46–3(f). For the reasons explained in this Part V of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS decline to adopt this request in the final regulations. The Treasury Department and the IRS have determined, however, that an interim rule allowing partnerships that meet certain requirements to determine a partner's distributive share of the tax exempt income resulting from an elective payment election in accordance with the basic principles governing partnership income allocations under the section 704(b) regulations, instead of in accordance with the principles under the section 704(b) regulations and § 1.46–3(f) for allocations of investment tax credits, is appropriate for purposes of section 48D.

Section 48D is among the investment credits listed under section 46. *See* section 46(6). The investment credit under section 46 is a business credit under section 38(b)(1). Thus, property with respect to which a section 48D credit is determined is section 38 property. Section 1.704–1(b)(4)(ii), which requires allocations with respect to the investment credit provided by section 38(b)(1) to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or qualified investment made in accordance with § 1.46–3(f) are deemed to be made in accordance with the partners' interests in the partnership. Pursuant to § 1.46–3(f)(1), in the case of a partnership that owns section 38 property, each partner is treated as the taxpayer with respect to the partner's share of the basis of partnership section 38 property. Section 1.46–3(f)(2)(i) provides that a partner's share of basis of any section 38 property is determined in accordance with the ratio in which the partners share general profits. Pursuant to § 1.46–3(f)(2)(ii), if all related items of income, gain, loss, and deduction with respect to any item of partnership section 38 property are specially allocated in the same manner and if such special allocation is recognized under section 704(a) and (b) and § 1.704–1(b) (that is, the allocation must have substantial economic effect), then each partner's share of the basis of such item of section 38 property is determined by reference to the special allocation effective for the date on which the property is placed in service, rather than in accordance with the ratio in which the partners share general profits. Thus, § 1.46–3(f), as currently in effect, already permits special allocations of a partner's share of the basis of an item of section 38 property independent of the ratio in which the partners divide the general profits of the partnership if all requirements under § 1.46–3(f)(2)(ii) are met. Accordingly, the final regulations do not incorporate the commenter's request to allow a partnership to allocate a partner's distributive share of the section 48D credit without regard to § 1.46–3(f).

Section 48D(d)(2)(A)(i)(IV) provides that a partner's distributive share of the tax exempt income resulting from a partnership receiving an elective payment is based on such partner's distributive share of the otherwise applicable credit (section 48D credit) for each taxable year. Consistent with section 48D(d)(2)(A)(i)(IV), proposed § 1.48D–6(d)(2)(iv) would provide that a partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in qualified property under proposed § 1.48D–2(h)(2)(i) (referring to § 1.46–3(f)) for such taxable year. Notwithstanding section 48D(d)(2)(A)(i)(IV), section 48D(d)(6) expressly authorizes the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 48D(d), including regulations or other guidance providing rules for determining a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III). The Treasury Department and the IRS have determined that a general rule in the final regulations that would allow a partnership to determine a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) without regard to section 48D(d)(2)(A)(i)(IV) is inconsistent with the language in section 48D(d)(2)(A)(i)(IV) and the structure and the purpose of the statute.

The Treasury Department and the IRS are aware that taxpayers may have entered into written binding partnership agreements for the joint ownership and operation of an advanced manufacturing facility or qualified property in anticipation of the enactment of the CHIPS Act on August 9, 2022. Other taxpayers may have entered into such written binding partnership agreements on or after August 9, 2022, and before publication of the proposed regulations under section 48D(d) in the **Federal Register** on June 21, 2023. The Treasury Department and the IRS are also aware that such taxpayers may have made

erroneous assumptions in their partnership agreements concerning the allocation of the tax exempt income described in section 48D(d)(2)(A)(i)(III), and, more specifically, that such tax exempt income could be allocated otherwise than as provided in section 48D(d)(2)(A)(i)(IV). These binding partnership agreements may have the effect of diminishing or negating the benefit of elective pay under section 48D(d) for taxpayers that are engaging in activities incentivized by the CHIPS Act through partnerships if a partner's distributive share under section 704(b) of the tax exempt income must be determined in accordance with its distributive share of the otherwise applicable section 48D credit.

For this reason, the Treasury Department and the IRS have determined that an interim rule allowing a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) to be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i), as opposed to pursuant to the rules for credits provided in §§ 1.704–1(b)(4)(ii) and 1.46–3(f), is consistent with the structure and purpose of the CHIPS Act to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. Accordingly, the final regulations provide that if a written binding partnership agreement was entered into after December 31, 2021, and before June 22, 2023, and if the partnership was formed for the purpose of owning and operating an advanced manufacturing facility or qualified property, a partner's distributive share of the tax exempt income described in section 48D(d)(2)(A)(i)(III) may be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i), instead of in accordance with the manner in which the otherwise applicable section 48D credits would have been allocated under §§ 1.704–1(b)(4)(ii) and 1.46–3(f).

In determining the amount of the section 48D credit that will result in a payment to the partnership or S corporation under section 48D(d)(2)(A)(i)(I) and in § 1.48D–6(d)(2)(ii)(A), the Treasury Department and the IRS have clarified under § 1.48D–6(d)(6)(i) that, in addition to section 469 of the Code, a partnership or S corporation is not subject to section 38(b) and (c) because those sections apply at the partner or S shareholder level.

No comments were received with respect to the remaining special rules for a partnership or S corporation making an elective payment election, including the timing of tax exempt income under proposed § 1.48D–6(d)(2)(vi), the character of tax exempt income under proposed § 1.48D–6(d)(5), the methodology for determining the amount of section 48D credit including the application of sections 49, 50, and 469 under proposed § 1.48D–6(d)(6), and rules applicable to payments made to partnerships subject to the centralized partnership audit regime found in subchapter C of chapter 63 of the Code under proposed § 1.48D–6(d)(7). The Treasury Department and the IRS adopt the proposed regulations without further modification, but their designations have been revised to better accommodate the interim rule.

VI. Denial of Double Benefit Rule

Commenters requested further guidance regarding the method for computing the elective payment amount. One commenter requested additional examples with other general business credits (GBCs) to demonstrate the effect of the ordering rule in determining the elective payment amount. Several commenters requested that the final regulations not include the section 38 ordering rule in proposed § 1.48D–6(e)(2). These commenters stated that section 48D requires, with respect to an elective payment election, that the taxpayer is treated as making a payment against tax equal to the amount of the section 48D credit, and the treatment of the section 48D credit as a payment thereby exempts it from the ordering rule. They also claimed that the inclusion of the ordering rule limits the elective payment amount of the section 48D credit determined for the taxable year subject to elective pay while also limiting the amount of other GBCs that may be claimed.

The Treasury Department and the IRS agree with commenters that the GBC ordering rules can result in a lowered elective payment amount; thus, these final regulations include changes to address that result. Section 48D(d)(1) provides that the taxpayer making an elective payment election will be treated as making a payment against tax equal to the amount of the credit, and section 48D(d)(2)(C) references such payment, as noted by the commenters. It is section 48D(d)(3) that creates a bifurcated treatment for purposes of the Code by reducing the credit to zero, but for any other purposes under the Code, deeming the credit to have been allowed to the taxpayer for such taxable year.

In reviewing these provisions, the Treasury Department and the IRS have determined that section 38 is the section of the Code with respect to which the credit should be reduced to zero as provided under section 48D(d)(3), other than as explained in this paragraph. As section 38 is the operative provision under which the section 48D credit would be taken into account and allowed to reduce tax liability, it is reasonable to read the no double benefit rule in section 48D(d)(3) to reduce the section 48D credit to zero for purposes of section 38. This prevents a direct double benefit that could be achieved from claiming the credit. However, preventing such a double benefit does not require reducing the section 48D credit to zero for purposes of section 38 to the extent a credit is needed to reduce tax liability up to the section 38(c) limitation. In addition, reducing a section 48D credit to zero in such situations would unnecessarily disadvantage a taxpayer filing on extension by preventing them from claiming the section 48D credit as a current year GBC. This is because, to the extent applied as a credit, the section 48D credit will reduce tax liability as of the due date of the return, while the elective payment amount is not treated as being made until the later of the due date of the return or the date of filing. *See* section 48D(d)(2)(C). Treating the entire credit as zero in the case of a taxpayer filing on extension could result in more tax due on the due date of the return and, if not paid, would result in the taxpayer owing interest and could result in penalties assessed against the taxpayer.

The proposed rules accounted for this situation and helped mitigate any potential estimated tax penalties if amounts owed were not paid by the due date. No commenters objected to this aspect of the proposed rule. Thus, the Treasury Department and the IRS conclude that these final regulations should treat the section 48D credit as a credit for section 38 in the limited situation that the credit is needed to reduce tax liability up to the section 38(c) limitation. It is also noted that, for a taxpayer that is filing and making an election by the due date of their return, there should be no difference in outcome between treating the credit as reduced to $0 for section 38, or as a credit that reduces tax liability up to the section 38(c) limitation and a payment beyond the section 38(c) limitation.

Based on these conclusions, the Treasury Department and the IRS have made revisions to the rules and examples in proposed § 1.48D–6(e), including adding two new examples.

Under these final regulations, there is still a description of steps for a taxpayer to complete, but there is a change in the ordering of the steps and in how to calculate the net elective payment amount. The net elective payment amount, consistent with the proposed regulations, is the amount of the credit that is treated as a payment against the tax imposed by subtitle A. In the final regulations, the net elective payment amount is equal to the lesser of (1) the section 48D credit or (2) the total GBC (including the section 48D credit) over the total GBC allowed against tax liability (determined with regard to section 38(c)). Under these final regulations, a taxpayer will calculate the net elective payment amount prior to applying the ordering rules of section 38(d). These revisions allow for a taxpayer that has other GBCs to lower tax liability to the section 38(c) limitation using those GBCs without impact from the section 48D credit. But, the revisions also require a taxpayer to use the section 48D credit as a current year GBC to the extent that it is necessary to reduce tax liability up to the limitation under section 38(c). In all other situations, the section 48D credit will be zero for purposes of section 38 and the credit will be considered a payment of tax on the later of the due date of the return or filing (as prescribed by section 48D(d)(2)(C)).

In sum, these revisions to proposed § 1.48D–6(e) and the examples ensure two outcomes. First, consistent with commenters' recommendations, the final regulations ensure that taxpayers making an elective payment election will not have to delay using other GBCs because of the section 48D credit. Second, consistent with the proposed rule, these final regulations allow a taxpayer to benefit from a reduction in tax liability as of the due date of the return by treating the section 48D credit as a credit for purposes of section 38, up to the section 38(c) limitation.

A commenter requested that the final regulations clarify why the taxpayer in Example 2 under proposed § 1.48D–6(e)(4)(ii) may owe an estimated tax penalty if the section 48D credit for which an elective payment is made is deemed to have been allowed for purposes of calculating any underpayment of estimated taxes under section 6655 of the Code. The Treasury Department and the IRS note that the final regulations revise and include new examples in § 1.48D–6(e). The revised and new examples in § 1.48D–6(e) of these final regulations clarify that it is this timing rule under section 48D(d)(2)(C), and not the rules in proposed § 1.48D–6(e)(2) and (3) (regarding ordering and use of the section 48D credit) that creates the issue related to penalties for underpayment of estimated taxes. For example, if a taxpayer with a tax liability was solely relying on the elective payment amount to cover the tax liability, such taxpayer would be treated as making a payment related to the section 48D credit but could still incur an estimated tax penalty because section 48D(d)(2)(C) explicitly states that the payment of tax occurs on the date on which such return is filed.

Although no commenters specifically raised the application of potential penalties under section 6651 in the context of proposed § 1.48D–6(e) (denial of double benefit rule), the final regulations modify § 1.48D–6(e)(3) to clarify that a taxpayer may also be subject to a penalty under section 6651(a)(2) of the Code relating to the taxpayer's failure to timely pay tax if a return is filed after the original due date.

The Treasury Department and the IRS requested comments on additional Code sections under which it may be necessary to consider the section 48D credit to have been deemed allowed for the taxable year in which an elective payment election is made. In response, several commenters urged that the final regulations treat the entire elective payment amount as a payment against tax for purposes of determining base erosion minimum tax (known as the base erosion anti-abuse tax or BEAT) under section 59A and corporate alternative minimum tax (CAMT) credit under section 53(c) instead of as an investment tax credit. In contrast with the analysis earlier for section 38, the Treasury Department and the IRS conclude that treatment of the section 48D credit for purposes of BEAT and CAMT falls within the portion of section 48D(d)(3) that provides, for any other purposes under the Code, the credit will be deemed to have been allowed to such taxpayer for such taxable year. In contrast to section 38, BEAT and CAMT are not provisions pursuant to which the section 48D credit would be directly claimed, and treatment of the elective payment amount as suggested by the commenters would conflict with the language in section 48D(d)(3). Further, since section 48D(d)(3) provides that the section 48D credit is treated as a credit for other purposes of the Code, the section 48D credit is not analogous to other credits that are considered pre-payments of tax and for which the BEAT and CAMT regulations have an exception. See, for example, § 1.59A–5(b)(3)(i)(C) of the Income Tax Regulations, which provides that regular tax liability is not reduced for ''[a]ny credits allowed under sections 33, 37, and 53'' of the Code. Section 33 credits are related to withholding of tax at the source with respect to payments to foreign corporations and nonresident aliens. Section 37 is a credit for the overpayment of taxes. Section 53 relates to a credit for alternative minimum tax paid in a prior year. Thus, the final regulations adopt the rule as proposed.

VII. Special Rules

A. Excessive Payments

Proposed § 1.48D–6(f) would define the term ''excessive payment'' consistent with section 48D(d)(2)(F)(iii) and provide an example of an excessive payment, including the year in which the tax is imposed and the calculation of the additional 20 percent tax. The Treasury Department and the IRS requested comments on whether additional guidance on excessive payments is needed.

Commenters requested clarification of the proposed excessive payment rules related to their application, the reasonable cause standard, and appeals rights and deficiency procedures that apply to excessive payments. One commenter asked if the excessive payment addition to tax applies if the taxpayer does not make an elective payment election. Several commenters recommended adopting the reasonable cause standard under section 6664(c) for which the determination is based on the facts and circumstances and providing exceptions for reliance on professional advice and isolated computational or transcriptional error. One commenter specifically requested that the final regulations provide examples of reasonable cause relating to the beginning of construction issues.

The Treasury Department and the IRS recognize that taxpayers desire certainty when operating under tax rules for the first time. The Treasury Department and the IRS anticipate that existing standards of reasonable cause will inform the determination by the IRS of whether reasonable cause has been demonstrated for this purpose, and these final regulations do not create special rules for the elective payment election context. And, as noted by the commenters, existing standards of reasonable cause would be fact specific and including additional examples would inject significant complexity into the final regulations and likely cause additional uncertainty due to the inherently factual nature of the inquiry.

B. Basis Reduction and Recapture

Proposed § 1.48D–6(g)(2) would provide rules for adjusting basis with respect to property for which an election is made under section 48D(d)(1). Proposed § 1.48D–6(g)(3) would provide that any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance. No comments were received in response to proposed § 1.48D–6(g). Therefore, this Treasury decision adopts the proposed rules as final regulations.

Effect on Other Documents

The temporary regulations are removed May 10, 2024.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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.

The collections of information in these final regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under § 1.6001–1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to make an elective payment election. For PRA purposes, general tax records are already approved by OMB under 1545–0074 for individuals and 1545–0123 for business entities.

These final regulations also mention reporting requirements related to making elections and calculating the section 48D credit amount as detailed in § 1.48D–6. These elections will be made by eligible taxpayers as part of filing a return (such as the appropriate Form 1040, Form 1120, Form 1120–S, or Form 1065); and credit calculations will be made on Form 3800 and supporting forms. These forms are approved under 1545–0074 for individuals and 1545–0123 for business entities.

These final regulations also describe recapture procedures as detailed in § 1.48D–6 that are required by section 48D(d)(5). The reporting of a recapture event will still be required to be reported using Form 4255, Recapture of Investment Credit. This form is approved under 1545–0074 for individuals and 1545–0123 for business entities. These final regulations are not changing or creating new collection requirements for recapture not already approved by OMB.

These final regulations mention the reporting requirements to complete pre-filing registration with the IRS to be able to make an elective payment election in § 1.48D–6. The pre-filing registration portal and its associated burden has been reviewed and approved by OMB under 1545–2310 for all filers. These final regulations are not changing or creating new collection requirements for the prefiling registration that are already approved by OMB.

III. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. Although these final regulations may affect small entities, data are not readily available about the number of small entities affected. Regardless, the economic impact of these final regulations on small entities is not likely to be significant.

The Deputy Chief Counsel for Advocacy, Small Business Administration, recommended that the Treasury Department and the IRS provide a statement of the factual basis for the certification that the proposed rule will not have a significant economic impact on a substantial number of small entities including, at a minimum, a description of the affected entities, and provide the economic impact that the rules would have on small entities including estimates of the costs of reading and understanding the rules and any reporting and recordkeeping requirements. The Deputy Chief Counsel for Advocacy recommended including an analysis of the semiconductor industry associated with the North American Industry Classification System (NAICS) codes 334413 (Semiconductor and Related Device Manufacturing) and 333242 (Semiconductor Machinery Manufacturing).

The Treasury Department and the IRS agree that industries associated with semiconductor manufacturing are likely to be impacted by these rules but note that not all industries classified with NAICS codes 334413 and 333424 would be eligible for the section 48D credit. The March 2023 proposed regulations would provide proposed definitions for ''semiconductor manufacturing'' and ''semiconductor equipment manufacturing'' that may be different from classifications for NAICS code purposes.

For these reasons, the Treasury Department and the IRS believe that that it would not be appropriate to limit determining the number of impacted taxpayers based on existing data of entities associated with NAICS codes 334413 and 333424. As described in the Paperwork Reduction Act section to the temporary regulations, the Treasury Department and IRS expect 50 taxpayers to be impacted by the reporting requirements contained in the temporary regulations. The Treasury Department and the IRS determined this figure based on the number of entities expected to build or expand semiconductor manufacturing facilities and semiconductor manufacturing equipment facilities. The Treasury Department and the IRS believe this methodology more accurately reflects the number of taxpayers impacted by these final rules because it is based on the number of known projects.

The Treasury Department and the IRS do not have sufficient data to determine the number of small entities included in the estimate that are expected to be impacted by these final regulations. The Treasury Department and IRS are aware of ongoing and proposed projects involving large corporations that are unlikely to meet the definition of a small business, as that term is defined by the Small Business Administration. Nonetheless, the Treasury Department and the IRS recognize that small businesses may be impacted by these final rules but believe the economic impact is not likely to be significant.

Section 48D is an investment credit for taxpayers that make qualified investments in advanced manufacturing facilities the primary purpose of which is manufacturing semiconductors and semiconductor manufacturing equipment. Section 48D(d) allows such taxpayers to make an elective payment election to treat the section 48D credit as a refundable payment against the income tax in lieu of claiming the credit. A partnership of S corporation may elect to receive a payment equal to

the amount of the credit. Section 48D(d)(2)(E) authorizes the IRS to require such information or registration as the Secretary deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments, as a condition of, and prior to, any amount being treated as a payment made or received by the taxpayer, as may be the case.

These final regulations describe the rules for making the elective payment election, the special rules applicable to partnerships and S corporations, the repayment of excessive payments, and basis reduction and recapture. These final regulations provide the manner for making an elective payment election which includes the filing of the annual return including the completed source credit form and completed Form 3800. These final regulations also provide that taxpayers wanting to make the elective payment election must complete the pre-filing registration process and provide the rules relating to the pre-filing registration process. The pre-filing registration process would allow the IRS to verify certain information before the election is made and then process the tax return on which the election is made with minimal delays.

The economic impact associated with these final regulations include administrative costs related to reading and understanding the rules and reporting and recordkeeping requirements. The costs related to reading and understanding the rules is not quantifiable. However, the cost is not likely to be significant because projects seeking to qualify for the section 48D credit will involve complex legal and commercial transactions, and the cost of understanding these final rules would be implicit in such transactions. The reporting and recordkeeping requirements associated with the elective payment election is not likely to be significant because they are consistent with the existing framework for claiming business tax credits absent of an election. The reporting requirements and recordkeeping requirements associated with the pre-filing registration process is not likely to be significant because the information requested at pre-filing registration is that which a taxpayer claiming a section 48D credit should have available, and taxpayers claiming a section 48D credit are likely to have the resources available given the complexity of their projects. The estimated burden of complying with the recordkeeping and reporting requirements are further described in the Paperwork Reduction Act section of the preamble.

For these reasons, the Treasury Department and the IRS certify that the final regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

The Chief Counsel for the Office of Advocacy submitted comments on the proposed regulations, which are discussed in this part III of this Special Analysis section.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of this regulation is Lani M. Sinfield, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.48D–6 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.48D–6 also issued under 26 U.S.C. 48D(d)(6).

* * * * *

■ **Par. 2.** Sections 1.48D–0 through 1.48D–6 are added to read as follows:

Sec.

* * * * *

1.48D–0. Table of contents.
1.48D–1—1.48D–5 [Reserved]
1.48D–6 Elective payment election.

* * * * *

§ 1.48D–0. Table of contents.

This section lists the table of contents for §§ 1.48D–1 through 1.48D–6.

§ 1.48D–1—1.48D–5 [Reserved]
§ 1.48D–6 Elective payment election.
(a) Elective payment election.
(1) In general.
(2) Partnerships and S corporations.
(3) Irrevocable.
(b) Pre-filing registration required.
(1) In general.
(2) Manner of registration.
(3) Members of a consolidated group.
(4) Timing of pre-filing registration.
(5) Each qualified investment in an advanced manufacturing facility must have its own registration number.
(6) Information required to complete the pre-filing registration process.
(7) Registration number.
(i) In general.
(ii) Registration number is only valid for one year.
(iii) Renewing registration numbers.
(iv) Amendment of previously submitted registration information if a change occurs before the registration number is used.
(v) Registration number is required to be reported on the return for the taxable year of the elective payment election.
(c) Time and manner of election.
(1) In general.
(2) Limitations.
(d) Special rules for partnerships and S corporations.
(1) In general.

§ 1.48D–1—1.48D–5 [Reserved]

§ 1.48D–6 Elective payment election.

(a) *Elective payment election*—(1) *In general.* A taxpayer, after successfully completing the pre-filing registration requirements under paragraph (b) of this section, may make an elective payment election with respect to any section 48D credit determined with respect to such taxpayer in accordance with section 48D(d)(1) of the Internal Revenue Code (Code) and this section. A taxpayer, other than a partnership or S corporation, that makes an elective payment election in the manner provided in paragraph (c) of this section will be treated as making a payment against the Federal income taxes imposed by subtitle A of the Code (subtitle A) for the taxable year with respect to which a section 48D credit is determined equal to the amount of the section 48D credit with respect to any qualified property otherwise allowable to the taxpayer (determined without regard to section 38(c) of the Code). The payment described in section 48D(d)(1), and this paragraph (a)(1) will be treated as made on the later of the due date (determined without regard to extensions) of the return of tax imposed by subtitle A for the taxable year or the date on which such return is filed.

(2) *Partnerships and S corporations.* See paragraph (d) of this section for special rules regarding elective payment elections under section 48D(d) applicable to partnerships and S corporations.

(3) *Irrevocable.* Any election under section 48D(d)(1) and this section, once made, will be irrevocable and, except as otherwise provided, will apply with respect to any amount of section 48D credit for the taxable year for which the election is made.

(b) *Pre-filing registration required*—(1) *In general.* Pre-filing registration by any taxpayer (including a partnership or an S corporation) in accordance with this paragraph (b) is a condition that must be successfully completed prior to making an elective payment election under section 48D(d)(1) and this section with respect to qualified property placed in service by the taxpayer as part of an advanced manufacturing facility of an eligible taxpayer. An elective payment election will not be effective with respect to the section 48D credit determined with respect to any such qualified property placed in service by any taxpayer unless the taxpayer received a valid registration number for the taxpayer's qualified investment in the advanced manufacturing facility of an eligible taxpayer in accordance with this paragraph (b) and provided the registration number for each qualified investment in each advanced manufacturing facility on its Form 3800, *General Business Credit* (or its successor), and on any required completed source form(s) with respect to the qualified investment, attached to the tax return in accordance with guidance. For purposes of this section, the term *guidance* means guidance published in the **Federal Register** or Internal Revenue Bulletin, as well as administrative guidance such as forms, instructions, publications, or other guidance on the *IRS.gov* website. *See* §§ 601.601 and 601.602 of this chapter. However, completion of the pre-filing registration requirements and receipt of a registration number does not, by itself, mean the taxpayer is eligible to receive a payment with respect to any section 48D credit determined with respect to the qualified property.

(2) *Manner of registration.* Unless otherwise provided in guidance, a taxpayer must complete the pre-filing registration process electronically through the IRS electronic portal and in accordance with the instructions provided therein.

(3) *Members of a consolidated group.* A member of a consolidated group is required to complete pre-filing registration as a condition of, and prior to, making an elective payment election. *See* § 1.1502–77 (providing rules regarding the status of the common parent as agent for its members).

(4) *Timing of pre-filing registration.* A taxpayer must satisfy the pre-filing registration requirements of this paragraph (b) and receive a registration number under paragraph (b)(7) of this section prior to making any elective payment election under this section on the taxpayer's tax return for the taxable year at issue.

(5) *Each qualified investment in an advanced manufacturing facility must have its own registration number.* A taxpayer must obtain a registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer with respect to which an elective payment election is made.

(6) *Information required to complete the pre-filing registration process.* Unless modified in future guidance, a taxpayer must provide the following information to the IRS to complete the pre-filing registration process:

(i) The taxpayer's general information, including its name, address, taxpayer identification number, and type of legal entity;

(ii) Any additional information required by the IRS electronic portal;

(iii) The taxpayer's taxable year, as determined under section 441 of the Code;

(iv) The type of annual return(s) normally filed by the taxpayer with the IRS;

(v) A list of each qualified investment in an advanced manufacturing facility that the taxpayer intends to use to determine a section 48D credit for which the taxpayer intends to make an elective payment election;

(vi) For each qualified investment in an advanced manufacturing facility listed in paragraph (b)(6)(v) of this section, any further information

required by the IRS electronic portal, such as:

(A) The type of qualified investment in the advanced manufacturing facility;

(B) Physical location (that is, address and coordinates (longitude and latitude) of the advanced manufacturing facility);

(C) Supporting documentation relating to the construction, reconstruction or acquisition of the advanced manufacturing facility (such as, State and local government permits to operate the advanced manufacturing facility, certifications, and evidence of ownership that ties to the land deed, lease, or other documented right to use and access any land upon which the advanced manufacturing facility is constructed or housed);

(D) The beginning of construction date and the placed in service date of any qualified property that is part of the advanced manufacturing facility, or the date of the last progress expenditure made during the taxable year;

(E) The source of funds the taxpayer used to acquire the qualified property with respect to which the qualified investment was made; and

(F) Any other information that the taxpayer or entity believes will help the IRS evaluate the registration request;

(vii) The name of a contact person for the taxpayer. The contact person is the person whom the IRS may contact if there is an issue with the registration. The contact person must either:

(A) Possess legal authority to bind the taxpayer; or

(B) Must provide a properly executed power of attorney on Form 2848, *Power of Attorney and Declaration of Representative;*

(viii) A penalties of perjury statement, effective for all information submitted as a complete application, and signed by a person with personal knowledge of the relevant facts that is authorized to bind the registrant; and

(ix) Any other information the IRS deems necessary for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section that is provided in guidance.

(7) *Registration number*—(i) *In general.* The IRS will review the information provided and will issue a separate registration number for each qualified investment in an advanced manufacturing facility of an eligible taxpayer for which the taxpayer making the registration provided sufficient verifiable information.

(ii) *Registration number is only valid for one year.* A registration number is valid only with respect to the taxpayer that obtained the registration number under this section and only for the taxable year for which it is obtained.

(iii) *Renewing registration numbers.* If an elective payment election will be made with respect to any section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for a taxable year after a registration number under this section has been obtained, the taxpayer must renew the registration for that subsequent year in accordance with applicable guidance, including attesting that all the facts previously provided are still correct or updating any facts.

(iv) *Amendment of previously submitted registration information if a change occurs before the registration number is used.* As provided in instructions to the pre-filing registration portal, if specified changes occur with respect to a qualified investment in an advanced manufacturing facility for which a registration number has been previously obtained, a taxpayer must amend the registration (or may need to submit a new registration) to reflect these new facts. For example, if an eligible taxpayer that is the owner of an advanced manufacturing facility previously registered qualified investments in the advanced manufacturing facility or the advanced manufacturing facility, and the advanced manufacturing facility undergoes a change of ownership (incident to a corporate reorganization or an asset sale) such that the new owner has a different employer identification number (EIN) than the owner who obtained the original registration, the original owner of the advanced manufacturing facility must amend the original registration to disassociate its EIN from the advanced manufacturing facility and the new owner must submit separately an original registration (or if the new owner previously registered other qualified investments or advanced manufacturing facilities, must amend its original registration) to associate the new owner's EIN with the previously registered advanced manufacturing facility.

(v) *Registration number is required to be reported on the return for the taxable year of the elective payment election.* The taxpayer must include the registration number of the qualified investment in the advanced manufacturing facility on the taxpayer's return as provided in this paragraph (b) for the taxable year. The IRS will treat an elective payment election as ineffective with respect to a section 48D credit determined with respect to a qualified investment in an advanced manufacturing facility for which the taxpayer does not include a valid registration number that was assigned to that particular taxpayer during the pre-registration process on the annual return.

(c) *Time and manner of election*—(1) *In general.* Any elective payment election under section 48D(d)(1) and this section with respect to any section 48D credit determined with respect to a taxpayer's qualified investment must—

(i) Be made on the taxpayer's original return of tax (including a superseding return) filed not later than the due date (including extensions of time) for the taxable year for which the section 48D credit is determined and the election is made in the manner prescribed by the IRS in guidance;

(ii) Include any required completed source credit form(s), a completed Form 3800, and any additional information required in instructions, including supporting calculations;

(iii) Provide on the completed Form 3800 and on any required source credit form(s) a valid registration number for the qualified investment that is placed in service as part of an advanced manufacturing facility of an eligible taxpayer;

(iv) Include a statement attesting under the penalties of perjury that—

(A) The taxpayer claiming to be an eligible taxpayer is not a foreign entity of concern within the meaning of § 1.48D–2(f)(2) and has not made an applicable transaction as defined in § 1.50–2(b)(3) during the taxable year that the qualified property is placed in service; and

(B) The taxpayer will not claim a double benefit (within the meaning of section 48D(d)(3) and paragraphs (d)(2)(ii)(B) and (C) and (e) of this section) with respect to any elective payment election made by the taxpayer; and

(v) Be made not later than the due date (including extensions of time) for the taxable year for which the election is made, but in no event earlier than May 8, 2023.

(2) *Limitations.* No elective payment election may be made for the first time on an amended return, withdrawn on an amended return, or made or withdrawn by filing an administrative adjustment request under section 6227 of the Code, although a numerical error with respect to a properly claimed elective payment election may be corrected on an amended return or by filing an administrative adjustment request under section 6227 if necessary. There is no relief available under § 301.9100–1 or § 301.9100–3 of this chapter for an elective payment election that is not

timely filed; however, relief under § 301.9100–2(b) may apply.

(d) *Special rules for partnerships and S corporations*—(1) *In general.* If a partnership or S corporation directly holds any property for which an advanced manufacturing investment credit is determined, any election under this section must be made by the partnership or S corporation. No election under section 48D(d) and this section by any partner or shareholder is allowed.

(2) *Election*—(i) *Time and manner of election.* An elective payment election by a partnership or S corporation is made at the same time and in the same manner, and subject to the pre-filing registration and other requirements for the election to be effective, as provided in paragraphs (b) and (c) of this section.

(ii) *Effect of election.* If a partnership or S corporation makes an elective payment election with respect to a section 48D credit, the following rules will apply:

(A) The Internal Revenue Service will make a payment to such partnership or S corporation equal to the amount of such credit, determined in accordance with paragraph (d)(6) of this section (unless the partnership or S corporation owes a Federal tax liability, in which case the payment may be reduced by such tax liability);

(B) Before determining any partner's distributive share, or S corporation shareholder's pro rata share, of such credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) Any partner's or S corporation shareholder's share of any qualified investment in an advanced manufacturing facility for which an elective payment election has been made for the taxable year, is reduced to zero for such taxable year.

(iii) *Coordination with sections 705 and 1366.* Any amount with respect to which the election is made is treated as tax exempt income for purposes of sections 705 and 1366 of the Code.

(iv) *Partner's distributive share*—(A) *In general.* Except as provided in paragraphs (d)(2)(iv)(B) and (C) of this section, a partner's distributive share of such tax exempt income is equal to such partner's distributive share of its otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership for such taxable year.

(B) *Interim rule.* If a partnership meets the requirements of paragraph (d)(2)(iv)(C) of this section, a partner's distributive share of the tax exempt income resulting from a section 48D(d) elective payment election made by the partnership with respect to property held directly by the partnership, may be determined in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i) instead of in accordance with the partner's distributive share of the otherwise applicable section 48D credits as determined under §§ 1.704–1(b)(4)(ii) and 1.46–3(f).

(C) *Partnership requirements.* A partnership meets the requirements of this paragraph (d)(2)(iv)(C) if its partnership agreement is a written binding contract that was entered into after December 31, 2021, and before June 22, 2023, and it was formed for the purpose of owning and operating an advanced manufacturing facility or qualified property.

(v) *S corporation shareholder's pro-rata share.* An S corporation shareholder's pro rata share (as determined under section 1377(a) of the Code) of such tax exempt income is taken into account by the S corporation shareholder in the taxable year (as determined under sections 444 and 1378(b) of the Code) in which the section 48D credit is determined and is based on the shareholder's otherwise apportioned basis in qualified property under regulations under section 48D that apply for purposes of allocating an S corporation shareholder's pro-rata share of basis in qualified property placed in service by the S corporation for the taxable year.

(vi) *Timing of tax exempt income.* Such tax exempt income resulting from such election is treated as received or accrued, including for purposes of sections 705 and 1366 of the Code, as of the date the qualified property is placed in service with respect to the partnership or S corporation.

(3) *Disregarded entity ownership.* In the case of a qualified property held directly by an entity disregarded as separate from a partnership or S corporation for Federal income tax purposes, such qualified property will be treated as held directly by the partnership or S corporation for purposes of making an elective payment election.

(4) *Electing partnerships in tiered structures*—(i) *In general.* If a partnership (upper-tier partnership) is a direct or indirect partner of a partnership that makes an elective payment election (lower-tier partnership) and directly or indirectly receives an allocation of tax exempt income resulting from the elective payment election made by the lower-tier partnership, the upper-tier partnership must determine its partners' distributive shares of such tax exempt income in proportion to each partner's distributive share of its otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by a partnership for such taxable year.

(ii) *Electing partnerships in tiered structures; interim rule.* If a lower-tier partnership determined its partners' distributive shares of the tax exempt income described in paragraph (d)(2)(iii) of this section using the interim rule described in paragraph (d)(2)(iv)(B) of this section, an upper-tier partnership that is a direct or indirect partner in such lower-tier partnership may determine its partners' distributive shares of the tax exempt income in accordance with the basic principles for partnership income allocations as described in § 1.704–1(b)(1)(i).

(5) *Character of tax exempt income.* Tax exempt income resulting from an elective payment election by an S corporation or a partnership is treated as arising from an investment activity and not from the conduct of a trade or business within the meaning of section 469(c)(1)(A). As such, the tax exempt income is not treated as passive income to any partners or shareholders who do not materially participate within the meaning of section 469(c)(1)(B).

(6) *Determination of amount of the section 48D credit*—(i) *In general.* In determining the amount of the section 48D credit that will result in a payment under paragraph (d)(2)(ii)(A) of this section, the partnership or S corporation must compute the amount of the credit allowable (without regard to section 38(c)) as if an elective payment election were not made. Because a partnership or S corporation is not subject to sections 38(b) and (c) and 469 (that is, those sections apply at the partner or shareholder level), the amount of the credit determined by a partnership or S corporation is not subject to limitation by those sections. Because the section 48D credit is an investment credit under section 46, sections 49 and 50 apply to limit the amount of the credit.

(ii) *Application of section 49 at-risk rules to determination of section 48D credit for partnerships and S corporations.* Any amount of section 48D credit determined with respect to qualified property held directly by a partnership or S corporation must be determined by the partnership or S

corporation taking into account the section 49 at-risk rules at the partner or shareholder level as of the close of the taxable year in which the qualified property is placed in service. Thus, if the credit base of a qualified property is limited to a partner or S corporation shareholder by section 49, then the amount of the section 48D credit determined by the partnership or S corporation is also limited. A partnership or S corporation that directly holds qualified property must request from each of its partners or shareholders, respectively, that is subject to section 49, the amount of such partner's or shareholder's nonqualified nonrecourse financing with respect to the qualified property as of the close of the taxable year in which the property is placed in service. Additionally, the partnership or S corporation must attach to its tax return for the taxable year in which the qualified property is placed in service, the amount of each partner's or shareholder's section 49 limitation with respect to any qualified property. Changes to at-risk amounts under section 49 for partners or S corporation shareholders after the close of the taxable year in which the qualified property is placed in service do not impact the section 48D credit determined by the partnership or S corporation, but do impact the partner(s) or S corporation shareholder(s) as provided in paragraph (d)(6)(iii) of this section.

(iii) *Changes in at-risk amounts under section 49 at partner or shareholder level.* A partner or shareholder in a partnership or S corporation, respectively, must apply the rules under section 49 at the partner or shareholder level if there is a change in nonqualified nonrecourse financing with respect to the partner or shareholder after the close of the taxable year in which the qualified property is placed in service and the section 48D credit is determined. If there is an increase in nonqualified nonrecourse financing to a partner, any adjustment under the rules of section 49(b) is calculated based on the partner's share of the basis (or cost) of the qualified property to which the section 48D credit was determined in accordance with regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership. If there is an increase in nonqualified nonrecourse financing to a shareholder, any adjustment under the rules of section 49(b) is calculated based on the shareholder's pro rata share of the basis (or cost) of the qualified property to which the section 48D credit was determined in accordance with regulations under section 48D that apply for purposes of allocating an S corporation shareholder's pro-rata share of basis in qualified property placed in service by the S corporation. If there is a decrease in nonqualified nonrecourse financing, any increase in the credit base is taken into account by the partner or shareholder as provided under section 49, and any resulting credit is not eligible for an elective payment election under section 48D(d).

(7) *Partnerships subject to subchapter C of chapter 63 of the Code.* See § 301.6241–7(j) of this chapter for rules applicable to payments made to partnerships subject to subchapter C of chapter 63 of the Code for a partnership taxable year.

(8) *Example.* P is a calendar-year partnership consisting of partners A and B, each 50 percent owners. P constructs Facility A, an advanced manufacturing facility, at V. P completes the pre-filing registration with respect to Facility A at V for 2024 in accordance with paragraph (b) of this section. In 2024, P places in service qualified property that is part of Facility A at V. P timely files its 2024 Form 1065 and properly makes the elective payment election in accordance with paragraph (c) of this section. On its Form 1065, P properly determines that the amount of section 48D credit with respect to the qualified property placed in service at Facility A for 2024 is $100,000. The IRS processes P's return and makes a $100,000 payment to P. Before determining A's and B's distributive shares, P reduces the section 48D credit to zero. However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to P for 2024. P does not qualify for the interim rule described in paragraph (d)(2)(iv)(B) of this section. The $100,000 is treated as tax exempt income for purposes of section 705, and A's and B's distributive shares of such tax exempt income is based on each partner's otherwise allocable basis in qualified property under regulations under section 48D that apply for purposes of allocating a partner's share of its basis in qualified property placed in service by the partnership for the 2024 taxable year ($50,000 each). A's and B's basis in their partnership interests and capital accounts will be appropriately adjusted to take into account basis adjustments made to the qualified property under section 50(c)(5) and § 1.704–1(b)(2)(iv)(*j*). See paragraph (g)(2) of this section. The tax exempt income received or accrued by P as a result of the elective payment election is treated as received or accrued, including for purposes of section 705, as of date P placed in service the qualified property in 2024.

(e) *Denial of double benefit*—(1) *In general.* In the case of a taxpayer making an election under section 48D(d) and this section with respect to any section 48D credit determined under section 48D(a) and regulations under section 48D that apply for purposes of determining the section 48D credit, such credit is reduced to zero and is, for any other purposes under the Code, deemed to have been allowed to the taxpayer for such taxable year. Paragraphs (e)(2) and (3) of this section explain the application of the section 48D(d)(3) denial of a double benefit rule to a taxpayer (other than a partnership or S corporation). The application of section 48D(d)(3) to a partnership or S corporation is provided in paragraphs (d)(2)(ii)(B) and (C) of this section.

(2) *Application of the denial of double benefit rule.* A taxpayer (other than a partnership or S corporation) making an elective payment election applies section 48D(d)(3) by taking the following steps:

(i) Compute the amount of the Federal income tax liability (if any) for the taxable year, without regard to the general business credit under section 38 of the Code (GBC), that is payable on the due date of the tax return (without regard to extensions), and the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on the amount of tax under section 38.

(ii) Compute the allowed amount of the GBC carryforwards carried to the taxable year under section 38(a)(1) plus the amount of the current year GBCs (including the current section 48D credit) for the taxable year under section 38(a)(2) and (b). Because the election is made on an original return for the taxable year for which the section 48D credit is determined, any business credit carrybacks are not considered when determining the elective payment amount for the taxable year.

(iii) Calculate the net elective payment amount for the section 48D credit, which equals the lesser of the section 48D credit for which an elective payment election is made or the excess (if any, otherwise the excess is zero) of the total GBC credits described in paragraph (e)(2)(ii) of this section over the amount of the Federal income tax liability that may be offset by GBCs pursuant to the limitation based on amount of tax under section 38 computed in paragraph (e)(2)(i) of this section. Treat the net elective payment

amount of the section 48D credit for which an elective payment election is made as a payment against the tax imposed by subtitle A for the taxable year with respect to which such credit is determined.

(iv) Excluding the net elective payment amount determined under paragraph (e)(2)(iii) of this section, but including any portion of the section 48D credit that is not part of the net elective payment amount, compute the allowed amount of GBC carryforwards carried to the taxable year plus the amount of current year GBCs allowed for the taxable year under section 38 (including, for clarity purposes, the ordering rules in section 38(d)). Apply these GBCs against the tax liability computed in paragraph (e)(2)(i) of this section.

(v) Reduce the section 48D credit for which an elective payment election is made by the net elective payment amount, as provided in paragraph (e)(2)(iii) of this section, and by the amount (if any) allowed as a GBC under section 38 for the taxable year, as provided in paragraph (e)(2)(iv) of this section, which results in the section 48D credit being reduced to zero.

(3) *Use of the section 48D credit for other purposes.* The full amount of the section 48D credit for which an elective payment election is made is deemed to have been allowed for all other purposes of the Code, including, but not limited to, the basis reduction and recapture rules imposed by section 50 and the calculation of tax, calculation of the amount of any underpayment of estimated tax under sections 6654 and 6655 of the Code, and the addition to tax for the failure to pay under section 6651(a)(2) of the Code (if any).

(4) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Z Corp is a calendar-year C corporation. Z Corp places in service qualified property that is part of an advanced manufacturing facility in June of 2024. Z Corp completes the pre-filing registration in accordance with this section and receives a registration number for the qualified property. Z Corp timely files (with extension) its 2024 Form 1120 on October 15, 2025, properly making the elective payment election with respect to the section 48D credit earned with respect to the qualified property in accordance with this section. On its return, Z Corp properly determines that it has $500,000 of tax imposed by subtitle A of the Code (see paragraph (e)(2)(i) of this section). For simplicity, assume the maximum amount of GBCs that can be claimed for the taxable year is $375,000. Z Corp properly determines that the amount of the section 48D credit determined with respect to the qualified property (its GBC for the taxable year) is $100,000 (see paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $0, so the section 48D credit is considered a credit that reduces Z Corp's tax liability to $400,000 under paragraph (e)(2)(iv) of this section. Z Corp pays its $400,000 tax liability on October 15, 2025. Under paragraph (e)(2)(v) of this section, the $100,000 of section 48D credit is reduced by the $100,000 of section 48D credit claimed as GBCs for the taxable year, which results in the section 48D credit being reduced to zero. However, the $100,000 of the current year section 48D credit is deemed to have been allowed to Z Corp for 2024 for all other purposes of the Code (paragraph (e)(3) of this section). Because Z Corp paid its tax liability after the original due date for the filing of its Form 1120, Z Corp will owe a failure to pay penalty under section 6651(a)(2) and interest. Z Corp may also owe a penalty for failure to pay estimated income tax under section 6655.

(ii) *Example 2.* Assume the same facts as in paragraph (e)(4)(i) of this section (*Example 1*), except that Z Corp has $80,000 of tax imposed by subtitle A (paragraph (e)(2)(i) of this section) and calculates its limitation of GBC under section 38(c) (simplified) is $60,000 (paragraph (e)(2)(i) of this section), and Z Corp timely files its Form 1120 on April 15 instead of October 15. Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $40,000 (lesser of $100,000 section 48D credit or $100,000 of total GBC credits described in paragraph (e)(2)(ii) of this section minus $60,000 of section 38(c) limitation). Under paragraph (e)(2)(iv) of this section, Z Corp uses $60,000 of its $100,000 of section 48D credit against its tax liability. Z Corp reduces the section 48D credit by the $40,000 net elective payment amount determined in paragraph (e)(2)(iii) of this section and by the $60,000 section 48D credit claimed against tax in paragraph (e)(2)(iv) of this section, resulting in the credit being reduced to zero (paragraph (e)(2)(v) of this section). When the IRS processes Z Corp's 2024 Form 1120, the net elective payment amount results in a $20,000 refund to Z Corp (after applying $20,000 of the $40,000 net elective payment amount to cover Z Corp's tax shown on the return). However, for other purposes of the Code, the $100,000 section 48D credit is deemed to have been allowed to Z Corp for 2024 (paragraph (e)(3) of this section). Even though Z Corp did not owe tax after applying the net elective payment amount against its net tax liability, Z Corp may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.

(iii) *Example 3.* X Corp is a calendar-year C corporation. X Corp places in service qualified property that is part of an advanced manufacturing facility in June of 2025. X Corp completes the pre-filing registration in accordance with this section and receives a registration number for the qualified property. In 2026, X Corp timely files its 2025 return (without extension), calculating its federal income tax before GBCs of $125,000 and that its limitation of GBC under section 38(c) (simplified) is $100,000 (paragraph (e)(2)(i) of this section). X Corp attaches Form 3468 to claim a current section 48D credit of $50,000. X Corp also attaches Form 5884 to claim a current work opportunity tax credit (WOTC) of $50,000. X Corp also has business credit carryforwards of $25,000, which together with the 48D credit and WOTC results in a total of $125,000 of GBC for the taxable year (paragraph (e)(2)(ii) of this section). Under paragraph (e)(2)(iii) of this section, the net elective payment amount is $25,000. Under paragraph (e)(2)(iv) of this section, including using the ordering rules in section 38(d), X Corp is allowed $25,000 of the carryforwards, $25,000 of section 48D credit (as its section 46 investment credit) plus $50,000 of WOTC against net income tax, as defined under section 38(c)(1)(B). The $25,000 of unused section 48D credit is the net elective payment amount that results in a $25,000 payment against tax by X Corp (paragraph (e)(2)(iii) of this section). On its return, X Corp shows net tax liability of $25,000 ($125,000 − $100,000 allowed GBC) and the net elective payment of $25,000 which X Corp applied to net tax liability, resulting in zero tax owed on the return. Under paragraph (e)(2)(v) of this section, X Corp's section 48D credit is reduced by the $25,000 of the net elective payment amount, as well as by the $25,000 of section 48D credit claimed as a GBC for the taxable year, resulting in the $50,000 of section 48D credit being reduced to zero. However, for all other purposes of the Code, the $50,000 of section 48D credit is deemed to have been allowed to X Corp for 2025 (paragraph (e)(3) of this section). Even though X Corp did not owe tax after applying the net elective payment amount against its net tax liability, X

Corp may be subject to the section 6655 penalty for failure to pay estimated income tax. The net elective payment is not an estimated tax installment, rather, it is treated as a payment made at the filing of the return.

(iv) *Example 4.* Assume the same facts as in paragraph (e)(4)(iii) of this section (*Example 3*), except X Corp filed the return on a timely filed extension after the due date of the return (without extensions). Even though X Corp did not owe tax after applying the net elective payment amount against its net tax liability, X Corp may be subject to the section 6651(a)(2) penalty for failure to pay tax.

(f) *Excessive payment*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, in the case of any amount treated as a payment which is made by the taxpayer under section 48D(d)(1) and paragraph (a) of this section, or any payment made pursuant to section 48D(d)(2)(A)(i)(I) and paragraph (d) of this section, with respect to any property, which amount the Commissioner determines constitutes an excessive payment as defined in paragraph (f)(3) of this section, the tax imposed on such taxpayer by chapter 1 of the Code for the taxable year in which such determination is made is increased by an amount equal to the sum of—

(i) The amount of such excessive payment; plus

(ii) An amount equal to 20 percent of such excessive payment.

(2) *Reasonable cause.* Paragraph (f)(1)(ii) of this section will not apply if the taxpayer demonstrates to the satisfaction of the Commissioner that the excessive payment resulted from reasonable cause.

(3) *Excessive payment defined.* For purposes of section 48D(d) and this paragraph (f), the term *excessive payment* means, with respect to any property for which an election is made under section 48D(d) and this section for any taxable year, an amount equal to the excess of—

(i) The amount treated as a payment which is made by the taxpayer pursuant to section 48D(d)(1) and paragraph (a) of this section, or any payment made by the Commissioner pursuant to section 48D(d)(2)(A)(i)(l) and paragraph (d) of this section, with respect to such property for such taxable year; over

(ii) The amount of the section 48D credit which, without application of section 48D(d) and this section, would be otherwise allowable (determined without regard to section 38(c)) under section 48D(a) and the section 48D regulations with respect to such property for such taxable year.

(4) *Example.* A Corp is a calendar-year C corporation. A Corp places in service qualified property that is part of Facility A, an advanced manufacturing facility in 2023. A Corp properly completes the pre-filing registration in accordance with paragraph (b) of this section and receives a registration number for the advanced manufacturing facility. A Corp timely files its 2023 Form 1120, properly providing the registration number for Facility A on Form 3800 and the relevant source credit form and otherwise complying with paragraph (c) of this section. On its return, A Corp calculates that the amount of the section 48D credit with respect to the qualified property is $100,000 and that the net elective payment amount is $100,000. A Corp receives a refund in the amount of $100,000. In 2025, the IRS determines that the amount of the section 48D credit properly allowable to A Corp in 2023 with respect to Facility A (as determined pursuant to § 1.48D–1(b) and without regard to the limitation based on tax in section 38(c)) was $60,000. A Corp is not able to show reasonable cause for the difference. The excessive payment amount is $40,000 ($100,000 treated as a payment − $60,000 allowable amount). In 2025, the tax imposed under chapter 1 on A Corp is increased in the amount of $48,000 ($40,000 + (20% * $40,000 = $8,000)).

(g) *Basis reduction and recapture*—(1) *In general.* The rules in section 50(a) and (c) of the Code apply with respect to elective payments under paragraphs (a) and (d) of this section.

(2) *Basis adjustment*—(i) *In general.* If a section 48D credit is determined with respect to property for which a taxpayer makes an election under section 48D(d)(1), then the adjusted basis of the property must be reduced by the amount of the section 48D credit determined for which the taxpayer made an election under section 48D(d)(1).

(ii) *Basis adjustment by partnership or S corporation.* If an advanced manufacturing investment credit is determined with respect to property for which a partnership or S corporation makes an election under section 48D(d)(1), then the adjusted basis of the property must be reduced by the amount of the advanced manufacturing investment credit determined with respect to the property held by the partnership or S corporation, for which the IRS made a payment to the partnership or S corporation pursuant to section 48D(d)(2)(A)(i)(I).

(iii) *Basis adjustment of partners and S corporation shareholders.* The adjusted basis of a partner's interest in a partnership, and stock in an S corporation, must be appropriately adjusted pursuant to section 50(c)(5) to take into account adjustments made under paragraph (g)(2)(ii) of this section in the basis of property held by the partnership or S corporation, as the case may be.

(3) *Recapture reporting.* Any reporting of recapture is made on the taxpayer's annual return in the manner prescribed by the IRS in any guidance.

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to taxable years ending on or after March 11, 2024.

(2) *Prior taxable years.* For taxable years ending before March 11, 2024 taxpayers may choose to apply the rules of this section to property that is placed in service after December 31, 2022, provided the taxpayers apply the rules in their entirety and in a consistent manner.

§ 1.48D–6T [Removed]

■ **Par. 3.** Section 1.48D–6T is removed.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: February 27,2024.

Aviva Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–04605 Filed 3–5–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101552–24]

RIN 1545–BR09

Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would modify existing regulations to allow certain unincorporated organizations that are organized exclusively to produce electricity from certain property to be excluded from the application of partnership tax rules. These proposed regulations would affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update certain outdated language in the existing regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 10, 2024. A public hearing on these proposed regulations has been scheduled for May 20, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 10, 2024. If no outlines are received by May 10, 2024, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–101552–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket.

Send paper submissions to: CC:PA:01:PR (REG–101552–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Cameron Williamson at (202) 317–6684 (not a toll-free number); and concerning submissions of comments and requests for a public hearing, contact Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) to carry out the purposes of section 6417 of the Code (proposed regulations). This document also provides notice of a public hearing on the proposed regulations.

I. Elective payment of applicable credits

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an ''applicable entity'' (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an ''applicable credit'' (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary of the Treasury or her delegate (Secretary) to provide rules for making elections under section 6417. Section 6417(h) requires the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6417. Generally, this includes issuing guidance to ensure that applicable entities that comply with the terms of section 6417 can benefit from its provisions. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On June 21, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 40528) proposed regulations (REG–101607–23) providing guidance on the section 6417 elective payment election (section 6417 proposed regulations). Proposed § 1.6417–2(a)(1)(iv) provided that partnerships are not applicable entities described in section 6417(d)(1)(A) or proposed § 1.6417–1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in proposed § 1.6417–1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, proposed § 1.6417–2(a)(1)(iii) provided that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid election under section 761(a) to be excluded from the application of the partnership tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property would be treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such share of the applicable credit property.

Comments were received in response to the section 6417 proposed regulations requesting that the Treasury Department and the IRS provide additional guidance as to the types of applicable credit property co-ownership arrangements that could validly elect under section 761(a) to be excluded from the application of subchapter K. Specifically, stakeholders stated that certain facts and circumstances common to jointly owned and operated renewable energy projects appear to violate certain provisions of § 1.761–2(a). Stakeholders requested that the Treasury Department and the IRS provide that applicable credit property indirectly owned via ownership of an interest in an entity (other than an entity required to be treated as a corporation under the Code) would still be considered owned as co-owners for purposes of § 1.761–2(a)(3)(i). Stakeholders also requested that parties to a joint ownership arrangement of applicable credit property producing electricity be permitted to delegate the

authority to enter into multi-year power purchase agreements (PPAs).

II. Overview of section 761(a) and § 1.761–2(a)(3)

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the income of the members of the organization may be adequately determined without the computation of partnership taxable income and the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities.

The Treasury Department and the IRS understand that unincorporated organizations seeking to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be formed for the joint production of property, but not for the purpose of jointly selling services or property produced or extracted. Section 1.761–2(a)(3) provides additional requirements for such unincorporated organizations to elect to be excluded from the application of subchapter K. These additional requirements include that the participants in such unincorporated organizations: (1) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (2) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used (severance requirement), and (3) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year. When an electing organization is no longer eligible to elect to be excluded from subchapter K, its existing election automatically terminates, and the organization must begin complying with the requirements of subchapter K.

III. Reason for Proposed Regulations

A. Co-Ownership and Severance Requirements

Under the current regulations, the requirements of § 1.761–2(a)(3) are met only in situations in which interests in the property of an electing unincorporated organization are owned directly by its members, rather than indirectly through ownership of interests in an entity that would otherwise be treated as a partnership under section 7701 and § 301.7701–3 (for example, a limited liability company with multiple owners).

Stakeholders have requested that co-ownership arrangements of applicable credit property through an entity (other than one required to be treated as a corporation under the Code) be treated as satisfying the co-ownership and severance requirements. As support for this request, stakeholders have pointed out that pre-IRA guidance allowing for the use of partnership structures is widely used as a basis for structuring projects within the renewable energy industry and is well understood by all parties involved in the industry. However, direct co-ownership of renewable energy projects that meet the co-ownership and severance requirements is generally limited to projects directly including a utility or an off-taker as a co-owner. Stakeholders have argued that requiring renewable energy investments to be made directly, rather than through an entity, will make it more difficult for parties to such arrangements to obtain financing with respect to the investments or negotiate contracts.

In response to the concerns raised by stakeholders, the Treasury Department and the IRS agree that ownership of certain applicable credit property through an entity (other than one required to be treated as a corporation under the Code) is appropriate for purposes of satisfying the co-ownership and severance requirements in the context of an entity owned by one or more applicable entities seeking to make elections under section 6417; provided that, the other requirements of section 761(a) and § 1.761–2, as it would be modified by these proposed regulations, are met. As previously described, arrangements treated as partnerships for Federal income tax purposes are not treated as applicable entities and cannot make elective payment elections except in the case of credits determined under sections 45V, 45Q, and 45X. Thus, the Treasury Department and the IRS agree with stakeholders that to further the intent of Congress to encourage applicable entities to build, operate, and own renewable energy projects, it is necessary to expand the circumstances in which joint ownership arrangements of applicable credit property can be excluded from the application of subchapter K.

B. Joint Marketing Requirement

Under the current regulations, the joint marketing requirement provides that members of an unincorporated organization making an election under section 761(a) may not jointly sell services or the property produced or extracted by the unincorporated organization, except that each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year.

Some stakeholders have requested that the current regulations under section 761(a) be modified to provide that multi-year PPAs entered into alongside other members of an unincorporated organization will not violate the joint marketing requirement. In support of this position, stakeholders have raised that utilities and other potential counterparties may be averse to negotiating with multiple owners of a single renewable energy project, especially if any such owners lack relevant renewable energy expertise. If applicable entities are at a disadvantage to negotiating with utilities and other potential counterparties because of the requirements under section 761(a)(2) and § 1.761–2, investments in applicable credit property are unlikely to materialize in the manner intended by Congress. Likewise, if applicable entities cannot delegate authority to conduct such negotiations with respect to long-term projects—as is anticipated to be necessary for PPAs and similar arrangements—investments in applicable credit property are unlikely to materialize in the manner intended by Congress.

Explanation of Provisions

To carry out the purposes of section 6417 as intended by Congress, the proposed regulations contained in this notice of proposed rulemaking would amend the regulations under section 761(a) to provide an exception to certain rules in § 1.761–2(a)(3) in the case of an unincorporated organization that meets four requirements. First, the unincorporated organization must be owned, in part or in full, by one or more applicable entities (as defined in section 6417(d)(1) and § 1.6417–1(c)). Second, the unincorporated organization's

members must enter into a joint operating agreement with respect to the applicable credit property in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, or any associated renewable energy credits or similar credits. Third, the unincorporated organization must, pursuant to a joint operating agreement, be organized exclusively to jointly produce electricity from its applicable credit property (as defined in § 1.6417–1(e)) and for which one or more of the applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined. This requirement may be satisfied prior to the applicable credit property being placed in service (if necessary), provided the unincorporated organization is in the process of completing the applicable credit property and will operate the applicable credit property once it is placed in service. Fourth, one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property.

Solely for purposes of an election under section 761(a) by an unincorporated organization meeting those four requirements as well as the other requirements applicable under § 1.761–2 (an applicable unincorporated organization), the proposed regulations would modify the co-ownership and joint marketing requirements under § 1.761–2(a)(3) as follows.

The proposed regulations would modify the co-ownership requirement in § 1.761–2(a)(3)(i) to permit the participants in the unincorporated organization to own the applicable credit property through an organization that is an entity (other than an entity that is required to be treated as a corporation under the Code).

The proposed regulations would modify the joint marketing requirement in § 1.761–2(a)(3)(iii) to provide that a delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contacts that exceed the minimum needs of the industry and may be for longer than one year, provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year. In other words, a participant would not be permitted to enter into an agreement binding the participant to an agency relationship for longer than one year, but an agent of a participant may enter into a PPA that binds a participant to sell electricity generated by the participant's share of the applicable credit property for longer than one year. The proposed regulations would include an example illustrating this proposed rule.

The proposed regulations would also update certain outdated references to § 1.6031–1 and internal revenue officers. The Treasury Department and the IRS are considering additional updates to modernize the section 761(a) regulations, including rules addressing section 761(a) elections made by dealers in securities described in section 761(a)(3). The Treasury Department and the IRS are also considering changes to the revocation procedures described in § 1.761–2(b)(3). Comments are requested regarding these considerations and any other potential updates to the section 761(a) regulations.

Comments are requested regarding the scope and requirements of these proposed regulations, including whether similar exceptions are necessary for applicable entities that own applicable credit properties that do not produce electricity. The Treasury Department and the IRS are considering a rule that would terminate a section 761(a) election made by an applicable unincorporated organization relying on an exception in proposed § 1.761–2(a)(4)(iii) if any interest in the applicable unincorporated organization is sold or exchanged unless the resulting members in the unincorporated organization make a new section 761(a) election within a specified time period. In addition, the Treasury Department and the IRS are considering a rule that would prevent the deemed election rules in § 1.761–2(b)(2)(ii) from applying to any unincorporated organization relying on an exception in proposed § 1.761–2(a)(4)(iii). Comments are requested regarding these considerations and other potential means of preventing abuse of the exceptions in proposed § 1.761–2(a)(4)(iii).

Proposed Applicability Dates

Proposed § 1.761–2(a)(4), which would be applicable to elections under section 761(a) by applicable unincorporated organizations to be excluded from the application of all of subchapter K, is proposed to apply to taxable years ending on or after the date these proposed regulations are published in the **Federal Register**.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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.

This proposed regulation mentions reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to elect out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

Unincorporated entities meeting the requirements outlined in § 1.761–2(a)(4) of this proposed regulation satisfy relevant reporting requirements by submitting a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, containing, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under paragraphs (1) and either (2) or (3) of paragraph (a) of this section; a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained). These requirements and associated forms are already approved by OMB under 1545–0123 for business filers. These proposed regulations are not changing or creating new collection requirements not already approved by OMB.

The recordkeeping requirements mentioned in this proposed regulation are considered general tax records under § 1.6001–1(e). These records are required for the IRS to validate that electing taxpayers have consistently met

the regulatory requirements outlined in § 1.761–2. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers and 1545–0047 for tax-exempt organizations.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

These proposed regulations would affect unincorporated organizations that elect out of subchapter K in connection with an election under section 6417, as well as the members of such organizations.

Data is not readily available about these organizations. Such organizations could not have made an election out of subchapter K under the current regulations, so information about existing organizations that have made section 761(a) elections is not instructive.

Even if these proposed regulations affect a substantial number of small entities, such impact will not be significant. The proposed regulations do not make it more costly to make or maintain an election under section 761(a).

These proposed regulations do not change the procedural requirements under current § 1.761–2(b) for making an election under section 761(a). Other than to conform to modern formatting conventions, the proposed regulations would amend § 1.761–2(b) only by adding a parenthetical to clarify that in making a valid section 761 election, which requires attaching certain statements to a Form 1065 as required in accordance with the current regulations, proposed § 1.761–2(a)(4) should be taken into account, as applicable, with regard to the required statement that the organization qualifies under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (a)(3) ''(taking into account § 1.761–2(a)(4), as applicable)''. Otherwise, an unincorporated organization making an election under these proposed regulations would not be required to submit anything additional or different than required under current § 1.761–2(b).

These proposed regulations impose no new ongoing compliance costs. Though any unincorporated organization that has made an election under section 761(a) should ensure that it remains qualified under § 1.761–2(a)(1) and either § 1.761–2(a)(2) or (3) (taking into account proposed § 1.761–2(a)(4), as applicable), the proposed regulations do not add to this obligation. In fact, these proposed regulations could make it simpler for certain unincorporated organizations to stay qualified, given their joint operating agreements that satisfy the modified co-ownership and severance requirements and multi-year PPAs that satisfy the modified joint marketing requirement.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the number of entities affected and the impact of the proposed regulations on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on July 17, 2023, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 6417 proposed rules published on June 14, 2023, which informed the development of these proposed regulations.

VI. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for May 20, 2024, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 10, 2024. A period

of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by May 10, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–101552–24 and the language ''TESTIFY In Person.'' For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–101552–24.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–101552–24 and the language ''TESTIFY Telephonically.'' For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–101552–24.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–101552–24 and the language ''ATTEND In Person.'' For example, the subject line may say: Request to ATTEND Hearing In Person for REG–101552–24. Requests to attend the public hearing must be received by 5:00 p.m. ET on May 16, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–101552–24 and the language ''ATTEND Hearing Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–101552–24. Requests to attend the public hearing must be received by 5:00 p.m. ET on May 16, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by May 15, 2024.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Cameron Williamson. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.761–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.761–2 also issued under 26 U.S.C. 6417(h).

* * * * *

■ **Par. 2.** Section 1.761–2 is amended by:

■ a. Revising and republishing paragraphs (a)(1), (a)(2)(i), and (a)(3)(i);

■ b. Adding paragraph (a)(4);

■ c. Revising and republishing paragraphs (b)(1), (b)(2)(i) and (ii), (b)(3)(i), (c), and (e); and

■ d. Adding paragraph (f).

The revisions and additions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(1) *In general.* Under conditions set forth in this section, an unincorporated organization described in paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) may be excluded from the application of all or a part of the provisions of subchapter K of chapter 1 of the Code. Such organization must be availed of (i) for investment purposes only and not for the active conduct of a business, or (ii) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. The members of such organization must be able to compute their income without the necessity of computing partnership taxable income. Any syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association, does not fall within these provisions.

(2) * * *

(i) Own the property as co-owners,

* * * * *

(3) * * *

(i) Own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights, and

* * * * *

(4) *Exception for certain joint ownership arrangements of applicable credit property*—(i) *Scope.* Paragraph (a)(4)(iii) of this section provides certain exceptions to specified rules in paragraph (a)(3) of this section in the case of an applicable unincorporated organization meeting the requirements of paragraph (a)(4)(ii) of this section.

(ii) *Applicable unincorporated organization.* For purposes of this section, an *applicable unincorporated organization* is an unincorporated organization described in paragraph (a)(1) of this section:

(A) That is owned, in part or in whole, by one or more applicable entities, as defined in section 6417(d)(1) and § 1.6417–1(c),

(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, or any associated renewable energy credits or similar credits,

(C) That, pursuant to the joint operating agreement, is organized exclusively to produce electricity from its applicable credit property (as defined in § 1.6417–1(e)) and with respect to which one or more of the applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined, and

(D) For which one or more of the applicable entities will make an elective payment election under section 6417(a)

for the applicable credits determined with respect to its share of the applicable credit property.

(iii) *Specified exceptions for applicable unincorporated organizations.* Solely for purposes of an election under section 761(a) by an applicable unincorporated organization that meets the requirements of paragraphs (b) and (e) of this section:

(A) The requirement in paragraph (a)(3)(i) of this section is modified such that the participants are permitted to own the applicable credit property through an unincorporated organization that is an entity, other than one required to be treated as a corporation under any provision of the Code; and

(B) The requirement in paragraph (a)(3)(iii) of this section is modified such that the delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the industry and may be for more than one year, provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year.

(vi) *Example.* This example illustrates the application of the specified exceptions for applicable unincorporated organizations described in paragraph (a)(4) of this section.

(A) *Facts.* T is an Indian tribal government as defined in § 1.6417–1(c) and an applicable entity, and T and Y own an applicable credit property that will produce electricity through a limited liability company organized under T's tribal law (TLLC). No election under § 301.7701–3 of this chapter has been made to treat TLLC as an association for Federal tax purposes. T and Y enter into a joint operating agreement with respect to the ownership and operation of the applicable credit property in which each of T and Y reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced and any associated renewable energy credits or similar credits. On January 1st of year 1, T and Y enter into delegation agreements with Q that delegate T's and Y's authority to Q to sell electricity generated by T's and Y's shares of the applicable credit property. The term of the delegation agreements is one year, which does not exceed the minimum needs of the industry. On June 1st of year 1, Q enters into a power purchase agreement with Utility on T's and Y's behalf that commits T and Y to sell the electricity produced from their shares of the applicable credit property to Utility for a term of 15 years. At the end of the day on December 31st of year 1, the delegation agreements terminate.

(B) *Analysis.* Because T and Y did not delegate authority for a period of more than one year to sell the electricity produced from their shares of the applicable credit property, the requirements of paragraph (a)(4)(iii)(B) of this section are met. Assuming that TLLC otherwise meets the requirements of paragraphs (a)(1) and (a)(4)(ii) of this section, TLLC is an organization described in paragraph (a)(4)(iii)(A) of this section and can make an election under paragraphs (b) and (e) of this section to be excluded from the application of all of subchapter K under section 761(a). As such, T can make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held by TLLC, assuming the requirements of section 6417 are otherwise met. The analysis in this example would be the same whether Y is also an Indian tribal government, another applicable entity, or some other person.

(b) * * *

(1) *Time for making election for exclusion.* Any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) not later than the time prescribed by paragraph (e) of § 1.6031(a)–1 (including extensions thereof) for filing the partnership return for the first taxable year for which exclusion from subchapter K is desired. Notwithstanding the prior sentence such organization may be deemed to have made the election in the manner prescribed in paragraph (b)(2)(ii) of this section.

(2) *Method of making election.* (i) Except as provided in paragraph (b)(2)(ii) of this section, any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, which shall contain the information required in this paragraph (b)(2)(i). Such return must be filed with the Internal Revenue Service Center where the partnership return, Form 1065, would be required to be filed if no election were made. To determine the appropriate Internal Revenue Service Center, the principal office or place of business of the person filing the return will be considered the principal office or place of business of the organization. The partnership return must be filed not later than the time prescribed by paragraph (e) of § 1.6031(a)–1 (including extensions thereof) for filing the partnership return with respect to the first taxable year for which exclusion from subchapter K is desired. Such partnership return shall contain, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

(ii) If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it shall nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. Although the following facts are not exclusive, either one of such facts may indicate the requisite intent:

(A) At the time of the formation of the organization there is an agreement among the members that the organization be excluded from subchapter K beginning with the first taxable year of the organization, or

(B) The members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such

elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

(3) *Effect of election*—(i) *In general.* An election under this section to be excluded will be effective unless within 90 days after the formation of the organization (or by October 15, 1956, whichever is later) any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization, and also advises the Commissioner that the member has so notified all other members of the organization by registered or certified mail. Such election is irrevocable as long as the organization remains qualified under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), or unless approval of revocation of the election is secured from the Commissioner. Application for permission to revoke the election must be submitted to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply.

* * * * *

(c) *Partial exclusion from subchapter K.* An unincorporated organization which wishes to be excluded from only certain sections of subchapter K must submit to the Commissioner, no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired, a request for permission to be excluded from certain provisions of subchapter K. The request shall set forth the sections of subchapter K from which exclusion is sought and shall state that such organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), and that the members of the organization elect to be excluded to the extent indicated. Such exclusion shall be effective only upon approval of the election by the Commissioner and subject to the conditions the Commissioner may impose.

* * * * *

(e) *Cross reference.* For requirements with respect to the filing of a return on Form 1065 by a partnership, see § 1.6031(a)–1.

* * * * *

(f) *Applicability date.* Except as provided in paragraph (d) of this section, this section applies to taxable years ending on or after March 11, 2024.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–04606 Filed 3–5–24; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 68
Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA–HQ–OLEM–2022–0174; FRL–5766.6–02–OLEM]

RIN 2050–AH22

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its Risk Management Program (RMP) regulations as a result of Agency review. The revisions include several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, improvements to the public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. As major and other serious and concerning RMP accidents continue to occur, the record shows and EPA believes that this final rule will help further protect human health and the environment from chemical hazards through advancement of process safety based on lessons learned. These amendments seek to improve chemical process safety; assist in planning, preparedness, and response to Risk Management Program-reportable accidents; and improve public awareness of chemical hazards at regulated sources. While many of the provisions of this final rule reinforce each other, it is EPA's intent that each one is merited on its own, and thus severable.

DATES: This final rule is effective on May 10, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2022–0174. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Deanne Grant, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1096; email: *grant.deanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, EPA defines the following terms and acronyms here:

List of Abbreviations and Acronyms

ANSI American National Standards Institute
API American Petroleum Institute
CAA Clean Air Act
CAAA Clean Air Act Amendments
CBI Confidential Business Information
CCPS Center for Chemical Process Safety
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFATS Chemical Facility Anti-Terrorism Standards
CFR Code of Federal Regulations
CISA Cybersecurity & Infrastructure Security Agency
CSB Chemical Safety and Hazard Investigation Board
CSISSFRRA Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
CVI Chemical-terrorism Vulnerability Information
DHS Department of Homeland Security
DOJ Department of Justice
DOT Department of Transportation
EHS Extremely Hazardous Substances
EJ Environmental Justice
E.O. Executive Order
EPA Environmental Protection Agency
EPCRA Emergency Planning and Community Right-To-Know Act
FBI Federal Bureau of Investigation
FOIA Freedom of Information Act
FR Federal Register
GDC General Duty Clause
HF hydrofluoric acid
HHC highly hazardous chemical
ICR Information Collection Request
IIAR International Institute of Ammonia Refrigeration
IPAWS Integrated Public Alert & Warning System
ISD inherently safer design
IST inherently safer technology
LEPC Local Emergency Planning Committee
LOPA Layers of Protection Analysis
NAICS North American Industry Classification System
NASTTPO National Association of SARA Title III Program Officials
NECI National Enforcement and Compliance Initiative
NJDEP New Jersey Department of Environmental Protection
NRC National Response Center
NRI National Risk Index
NTTAA National Technology and Transfer Advancement Act
OCA offsite consequence analysis
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PES Philadelphia Energy Solutions
PHA process hazard analysis
PHMSA Pipeline and Hazardous Materials Safety Administration
PRA Paperwork Reduction Act
PSI process safety information
PSM process safety management
RAGAGEP recognized and generally accepted good engineering practices
RCA root cause analysis incident investigation
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RMP Risk Management Program or risk management plan
SARA Superfund Amendments and Reauthorization Act
SCCAP Safer Communities by Chemical Accident Prevention
SDS Safety Data Sheet
SERC State Emergency Response Commission
STAA safer technology and alternatives analysis
TCPA Toxic Catastrophe Prevention Act
TMA trimethylamine
TQ threshold quantity
UMRA Unfunded Mandates Reform Act

The contents of this preamble are:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this action is to make changes to the Risk Management Program (RMP) rule in order to improve safety at facilities that use and distribute hazardous chemicals. Because major and other serious and concerning RMP accidents continue to occur, this final rule aims to better identify and further regulate risky facilities to prevent accidental releases before they can occur. As explained in further detail in following sections of this preamble, EPA maintains that by taking a rule-based, prevention-focused approach in this action rather than the so-called ''compliance-driven,'' mostly post-incident, approach in the 2019 reconsideration rule (84 FR 69834, December 19, 2019), this rule will further protect human health and the environment from chemical hazards through process safety advancement without undue burden.

EPA proposed changes to its RMP regulations (40 Code of Federal Regulations (CFR) part 68) on August 31, 2022 (87 **Federal Register** (FR) 53556), after publishing a ''Notice of virtual public listening sessions; request for public comment'' (86 FR 28828) that solicited comments and information from the public regarding potential changes to the RMP regulations. EPA also hosted a series of virtual public hearings on September 26–28, 2022, to provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

B. Summary of the Major Provisions of the Regulatory Action

This action amends EPA's RMP regulations at 40 CFR part 68. These regulations apply to stationary sources (also referred to as ''facilities'') that hold specific ''regulated substances'' in excess of threshold quantities. These facilities are required to assess their potential release impacts, undertake steps to prevent releases, plan for emergency response to releases, and summarize this information in a risk management plan (RMP) submitted to EPA. The release prevention steps vary depending on the type of process, but progressively gain granularity and rigor over three program levels (*i.e.,* Program 1, Program 2, and Program 3).

The major provisions of this rule include several changes to the accident prevention program requirements, as well as enhancements to the emergency response requirements, and improvements to the public availability of chemical hazard information. Each of these provisions is introduced in the following paragraphs of this section and described in greater detail in sections V through VIII of this preamble.

Additionally, certain revised provisions apply to a subset of the processes based on program levels described in 40 CFR part 68 (or in one case, to a subset of processes within a program level). A full description of these program levels is provided in section III.A. of this preamble. Additional provisions are targeted at subgroups of processes that pose an elevated likelihood of impacting nearby communities. Factors elevating the likelihood of impacting nearby communities include source-specific accident history, industry accident history, and co-location with multiple facilities. Furthermore, some sectors are targeted for additional provisions due to recent accidents and widely known safer alternative technologies.

C. Costs and Benefits

Approximately 11,740 facilities have filed current RMPs with EPA and are potentially affected by the rule. These facilities include petroleum refineries and large chemical manufacturers; water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources, including Federal installations that use RMP-regulated substances.

In total, EPA estimates annualized final rule costs of $256.9 million at a 3% discount rate and $296.9 million at a 7% discount rate over a 10-year period. The largest annualized cost of the final rule is the Safer Technologies and Alternatives Analysis (STAA) implementation cost ($168.7 million at a 3% discount rate and $204.9 million at a 7% discount rate), followed by the practicability study ($27.0 million at a 3% discount rate and $28.6 million at a 7% discount rate), the STAA initial evaluation ($18.5 million at a 3% discount rate and $19.7 million at a 7% discount rate), information availability ($12.8 million at both 3% and 7% discount rates), employee participation plans ($11.5 million at both 3% and 7% discount rates), third-party audits ($7.5 million at both 3% and 7% discount rates), rule familiarization ($5.8 million at a 3% discount rate and $6.8 million at a 7% discount rate), and community notification systems ($4.0 million at both 3% and 7% discount rates). The remaining provisions impose annualized costs under $1 million, including root cause analysis ($0.7 million at both 3% and 7% discount rates), emergency backup power for perimeter monitors ($0.3 million at both 3% and 7% discount rates), and RMP justifications for natural hazards, facility siting, recognized and generally accepted good engineering practices (RAGAGEP), and no backup power, each have annualized costs below $0.1 million (at both 3% and 7% discount rates).

The Agency has determined that among the 2,636 potentially regulated private sector small entities impacted, 2,393, or 90.8 percent, may experience a cost of revenue impact of less than one percent, with an average small entity cost of $72,525; 167, or 6.3 percent, may experience an impact of between 1 and 3 percent of revenues with an average small entity cost of $629,271; and 75, or 2.8 percent, may experience an impact of greater than 3 percent with an average small entity cost of $1,083,823. The industry sectors of Farm Supplies Merchant Wholesalers and Farm Product Warehousing and Storage had the most entities potentially affected, with 146 and 96 entities, respectively. Within the Farm Supplies Merchant Wholesalers sector, the Agency determined that only 8 of the 146 small entities (6 percent of small entities) will experience impacts of between 1 and 3 percent of revenues and only 2 small entities (1 percent of small entities) will

experience impacts of more than 3 percent of revenue. Within the Farm Product Warehousing and Storage sector, the Agency determined that only 5 of the 96 small entities (5 percent of small entities) will experience impacts of between 1 and 3 percent of revenues and no small entities will experience impacts of more than 3 percent of revenue.

Among the 630 small government entities potentially affected, the minimum cost any entity will incur is $2,000; 365, or 58 percent, would incur costs ranging from $2,000 to $3,000; 248, or 39 percent, will incur costs ranging from $3,000 to $10,000; and 17, or 3 percent, will incur costs greater than $10,000. EPA estimated that for the rule to have a larger than 1 percent impact on the government entity with the largest cost impact, the entity would need to have revenue of less than $120 per resident. For the rule to have a larger than 1 percent impact on the smallest government entity identified in the data, the entity would need to have revenue of less than $650 per resident. Details of these analyses are presented in Chapter 8 of the RIA, which is available in the docket.

Major and other serious and concerning RMP accidents have continued to occur. EPA anticipates that promulgation and implementation of this final rule will reduce the risk of such accidents and the severity of the impacts when they occur. RMP accident data show past accidents have generated highly variable impacts, so the impacts of future accidents are difficult to predict. Nevertheless, it is clear from RMP accident data [1] and other relevant data from RMP regulated industry sectors,[2] that chemical accidents can impose substantial costs on firms, employees, emergency responders, the community, and the broader economy.

Specifically, the EPA expects the final rule provisions to result in a reduced frequency and magnitude of damages from releases, including damages that are quantified for the baseline period such as fatalities, injuries, property damage, hospitalizations, medical treatment, sheltering in place, and evacuations. EPA also expects the final rule provisions to reduce baseline damages that are not quantified. These damages include potential health risks from toxic chemical exposure, lost productivity at affected facilities, emergency response costs, transaction costs from potential subsequent legal battles, property value losses in nearby neighborhoods, environmental damage and costs of evacuation and sheltering-in-place events, and others. They have not been quantified because there is either limited or no information in the RMP data that could allow for precise quantification. However, in some cases, these damages could be even more detrimental to the facility and community than those damages that can be quantified. For example, regarding lost productivity, costs are highly variable based on the type of release, the extent of the damage, the location of the facility, and product being produced. Yet, Marsh Specialty, a risk management and energy consultancy, has collected data on 10,000 accidents in the petrochemical sector over 40 years and published 27 editions of its ''100 Largest Losses'' reports.[3] Their data suggest that lost productivity is typically two or three times the cost of property damage.[4] Another example of unquantified impacts can be examined with property value impacts. A recent hedonic property value analysis has examined the impact of RMP facility accidents on residential property values (Guignet et al. 2023a, b).[5] The analysis found that accidents with only onsite impacts reduced nearby property values between zero and two percent. However, accidents with impacts that occurred offsite, including fatalities, hospitalizations, people in need of medical treatment, evacuations, sheltering in place events, and/or property and environmental damage, reduced home values by two to three percent. The lower values persisted for about 10 to 12 years on average. The paper estimates an average loss of $5,350 per home in 2021-year values. Aggregating across the communities near the 661 facilities that experienced an offsite impact accident in their data, they calculate a total $39.5 billion loss. These studies strongly suggest that preventing or mitigating an accident at a chemical facility may prevent or mitigate lost productivity at RMP facilities and property value losses in nearby neighborhoods.

Further, in enacting section 112(r), Congress was focused on catastrophic accidents such as the 1984 Union Carbide industrial disaster in Bhopal, India,[6] which are extremely rare, but very high consequence events. While large chemical facility accidents that have occurred in the U.S. and Europe have not approached this level of damage, it is possible that could happen. For example, one of the most consequential chemical accidents in the U.S.[7] was the 1989 explosion at the Phillips facility in Pasadena, TX, that killed 23 workers ($239 million in 2022 dollars), injured at least 150 more ($7.5 million), and caused $1.8 billion in property damage.[8]

The five-year baseline period accident costs included in EPA's analysis is $540 million per year. This cost was estimated using impacts from accidents during 2016 through 2020 (the last year with complete data) reported to the RMP plan reporting database by facility owners and operators. EPA used this dataset due to a lack of alternative data describing accident impacts more comprehensively. This estimate does not include a major catastrophe on the scale of Union Carbide-Bhopal, or even Phillips-Pasadena. If the final rule provisions were to prevent or substantially mitigate even one accident of this magnitude, the benefits generated, quantified and unquantified, will be dramatic. Further, some

[1] EPA estimated monetized damages from RMP facility accidents of $540.23 million per year.

[2] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

[3] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

[4] Marsh JLT Specialty, ''100 Largest Losses 1974–2015: Large property damage losses in the hydrocarbon industry,'' 24th Edition, March 2016. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry and in a few cases, business loss costs.

[5] Guignet, Dennis, Robin R. Jenkins, Christoph Nolte, and James Belke. 2023a. The External Costs of Industrial Chemical Accidents: A Nationwide Property Value Study. *Journal of Housing Economics.* 62 (2023) 101954.

[6] Union Carbide release of approximately 40 tons of methyl isocyanate into the air killed over 3,700 people. Most of the deaths and injuries occurred in a residential area near the plant.; Lees, Frank P. Loss Prevention in the Process Industries, Volume 3, 2nd ed. Appendix 5, Bhopal (Oxford: Butterworth-Heinemann, 1996).

[7] As compared to consequences resulting from RMP accidents 2004–2020 listed in Appendix A of the Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[8] EPA estimated the values of injuries and deaths that occurred in Pasadena using the same values applied to injuries and deaths at RMP facility-reported accidents. See Exhibit 3–15 in the accompanying RIA for specific values and section 3.2.5.1 ''Fatalities and Injuries'' in the RIA for detailed explanations of how those values were estimated. The $1.8 billion in property damage was estimated by Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th ed., March 2022. *https://www.marsh.com/us/industries/energy-and-power/insights/100-largest-losses/100-largest-losses-report-download.html.*

accidents that occurred at RMP facilities during the five-year period were not reported to EPA because the facility either closed after the accident, decommissioned the process, or removed the regulated substance from the process involved in the accident before it was required to submit a report to the RMP Database.[9] Additionally, the many baseline accident impacts that are not reflected in the $540 million baseline accident cost estimate because EPA was unable to monetize them,[10] yet are expected to be avoided as a benefit of the final provisions, include responder costs, transaction costs, property value reductions, unmonetized costs of evacuations and sheltering-in-place, the costs of potential health effects from exposure to toxic chemicals, and productivity losses, among others. The $540 million estimate also does not reflect the full set of baseline inefficiencies that may be mitigated due to the improved information offered by several of the final provisions such as the community notification requirements and the back-up power for monitors. As the range of monetized accident impacts suggests (from $100 to $700 million for 2016 to 2020[11]), the variation in monetized damages is substantial. Preventing a single high-cost accident annually would offset annual rule costs.

When considering this final rule's likely benefits of avoiding some portion of the monetized accident impacts, as well as the additional nonmonetized benefits, EPA believes the costs of the rule are reasonable in comparison to its expected benefits. When assessing the reasonableness of the benefits and burdens of various regulatory options, EPA places weight on both preventing more common accidental releases captured in the accident history portion of the RMP database while also placing weight on less quantifiable potential catastrophic events. The Agency's judgment as to what regulations are ''reasonable'' is informed by both quantifiable and unquantifiable burdens and benefits as discussed more fully in section III.C of this preamble.

II. General Information

A. Does this action apply to me?

This rule applies to those facilities (referred to as ''stationary sources'' under the Clean Air Act, or CAA (42 U.S.C. 7412(r))) that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Nothing in this rule impacts the scope and applicability of the General Duty Clause (GDC) in CAA section 112(r)(1), 42 U.S.C. 7412(r)(1). See 40 CFR 68.1. Table 1 provides industrial sectors and the associated North American Industry Classification System (NAICS) codes for entities potentially affected by this action. The Agency's goal is to provide a guide on entities that might be affected by this action. However, this action may affect other entities not listed in this table. If you have questions about the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THE FINAL RULE

Sector	NAICS codes	Number of facilities	Chemical uses
Administration of environmental quality programs (*i.e.,* governments, government-owned water).	92, 2213 (government-owned).	1,449	Use chlorine and other chemicals for water treatment.
Agricultural chemical distributors/wholesalers	11, 424 (except 4246, 4247).	3,315	Store ammonia for sale; some in NAICS 111 and 115 use ammonia as a refrigerant.
Chemical manufacturing	325	1,502	Manufacture, process, store.
Chemical wholesalers	4246	317	Store for sale.
Food and beverage manufacturing	311, 312	1,571	Use (mostly ammonia) as a refrigerant.
Oil and gas extraction	211	719	Intermediate processing (mostly regulated flammable substances and flammable mixtures).
Other	21 (except 211), 23, 44, 45, 48, 491, 54, 55, 56, 61, 62, 71, 72, 81, 99.	246	Use chemicals for wastewater treatment, refrigeration, store chemicals for sale.
Other manufacturing	313, 314, 315, 326, 327, 33.	375	Use various chemicals in manufacturing process, waste treatment.
Other wholesale	421, 422, 423	39	Use (mostly ammonia) as a refrigerant.
Paper manufacturing	321, 322	55	Use various chemicals in pulp and paper manufacturing.
Petroleum and coal products manufacturing	324	156	Manufacture, process, store (mostly regulated flammable substances and flammable mixtures).
Petroleum wholesalers	4247	367	Store for sale (mostly regulated flammable substances and flammable mixtures).
Utilities/water/wastewater	221 (non-government-owned water).	519	Use chlorine (mostly for water treatment) and other chemicals.
Warehousing and storage	493	1,110	Use (mostly ammonia) as a refrigerant.
Total		11,740	

[9] For example, the Philadelphia Energy Solutions Refining and Marketing LLC facility in Philadelphia, PA, had a fire and explosions in the PES Girard Point refinery HF alkylation unit on June 21, 2019, which resulted in the release of HF. This facility deregistered the affected process before the deadline for their subsequent RMP report. For a description of damages from this accident see section 3.2.1 of the RIA and the CSB Report, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit, Factual Update, October 16, 2019, *https://www.phila.gov/media/20191204161826/US-CSB-PES-Factual-Update.pdf.*

[10] For descriptions on why EPA was unable to monetize each of these impacts, see Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174). Chapter 6, Section 6.2.

[11] Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

B. What action is the Agency taking?

EPA is amending its RMP regulations as a result of Agency review. The revisions include several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, improvements to the public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. Because major and other serious and concerning RMP accidents continue to occur, EPA believes that this final rule will help further protect human health and the environment from chemical hazards through advancement of process safety based on lessons learned. These amendments seek to improve chemical process safety; assist in planning, preparedness, and response to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources.

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

The statutory authority for this action is provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). Each modification of the RMP rule that EPA finalizes in this document is based on EPA's rulemaking authority under CAA section 112(r)(7) (42 U.S.C. 7412(r)(7)). When promulgating rules under CAA section 112(r)(7)(A) and (B), EPA must follow the procedures for rulemaking set out in CAA section 307(d) (see CAA sections 112(r)(7)(E) and 307(d)(1)(C)). Among other things, CAA section 307(d) sets out requirements for the content of proposed and final rules, the docket for each rulemaking, opportunities for oral testimony on proposed rulemakings, the length of time for comments, and judicial review.

D. What are the incremental costs and benefits of this action?

1. Summary of Estimated Costs

Table 2 presents a summary of the annualized final rule costs estimated in the Regulatory Impact Analysis (RIA).[12] In total, EPA estimates annualized costs of $256.9 million at a 3% discount rate and $296.9 million at a 7% discount rate.

TABLE 2—SUMMARY OF ESTIMATED ANNUALIZED COSTS [MILLIONS, 2022 DOLLARS] OVER A 10-YEAR PERIOD

Cost elements	Total undiscounted	Total discounted (3%)	Total discounted (7%)	Annualized (3%)	Annualized (7%)
Third-party Audits	$75.2	$64.2	$52.8	$7.5	$7.5
Root Cause Analysis	7.3	6.2	5.1	0.7	0.7
Safer Technology and Alternatives Analysis (STAA):					
Initial Evaluation	176.4	158.2	138.3	18.5	19.7
Practicability Study	256.9	230.2	201.0	27.0	28.6
Implementation	1,700.4	1,438.9	1,172.6	168.7	204.9
Backup Power for Perimeter Monitors	3.3	2.8	2.3	0.3	0.3
Employee Participation Plan	114.7	97.9	80.6	11.5	11.5
RMP Justifications:					
No Backup Power	.2	0.1	0.1	**0.0	**0.0
Natural Hazards	.4	0.4	0.3	**0.0	**0.0
Facility Siting	.4	0.4	0.3	**0.0	**0.0
RAGAGEP	.3	0.2	0.2	**0.0	**0.0
Community Notification System	39.7	33.9	27.9	4.0	4.0
Information Availability	127.6	108.8	89.6	12.8	12.8
Rule Familiarization	50.9	49.5	47.6	5.8	6.8
Total Cost*	2,554.0	2,191.7	1,818.9	256.9	296.9

*Totals may not sum due to rounding.
**Costs are zero due to rounding, Unrounded costs are $42,307 for Natural Hazards and Facility Siting, $27,582 for RAGAGEP, and $15,798 for No Backup Power.

The largest annualized cost of the final rule is the STAA implementation cost ($168.7 million at a 3% discount rate and $204.9 million at a 7% discount rate), followed by practicability study ($27.0 million at a 3% discount rate and $28.6 million at a 7% discount rate), STAA initial evaluation ($18.5 million at a 3% discount rate and $19.7 million at a 7% discount rate), information availability ($12.8 million at both 3% and 7% discount rates), employee participation plans ($11.5 million at both 3% and 7% discount rates), third-party audits ($7.5 million at both 3% and 7% discount rates), rule familiarization ($5.8 million at a 3% discount rate and $6.8 million at a 7% discount rate), and community notification systems ($4.0 million at both 3% and 7% discount rates). The remaining provisions impose annualized costs under $1 million, including root cause analysis ($0.7 million at both 3% and 7% discount rates), emergency backup power for perimeter monitors ($0.3 million at both 3% and 7% discount rates), and RMP justifications for natural hazards, facility siting, RAGAGEP, and no backup power, that each have annualized costs below $0.1 million (at both 3% and 7% discount rates).

The Agency has determined that among the 2,636 potentially regulated private sector small entities impacted by this rule, 2,393, or 90.8 percent, may experience an impact of less than 1 percent of revenue with an average small entity cost of $72,525; 167, or 6.3 percent, may experience an impact of between 1 and 3 percent of revenues with an average small entity cost of $629,271; and 75, or 2.8 percent, may experience an impact of greater than 3 percent with an average small entity cost of $1,083,823. Among the 630 small government entities potentially affected, none would incur costs of less than $2,000; 365, or 58 percent, would incur costs ranging from $2,000 to $3,000; 248, or 39 percent, would incur costs ranging from $3,000 to $10,000; and 17, or 3 percent, would incur costs greater

[12] Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

than $10,000. EPA estimated that for the rule to have a larger than 1 percent impact on the government entity with the largest cost impact, it would need to have revenue of less than $120 per resident. For the rule to have a larger than 1 percent impact on the smallest government entity identified in the data, it would need to have revenue of less than $650 per resident.[13]

2. Baseline Damages

Accidents and chemical releases from RMP facilities occur every year. They cause fires and explosions, damage to property, acute and chronic exposures of workers and nearby residents to hazardous materials, and serious injuries and fatalities. EPA is able to present data on the total damages that currently occur at RMP facilities each year. In this final rule, EPA presents the data based on a 5-year baseline period (2016–2020), summarizes RMP accident impacts and, when possible, monetizes them. Due to a lack of alternative data describing RMP accident impacts more comprehensively, EPA chose this five-year dataset to reflect the most recent trends regarding RMP accidents.[14] It is important to note, however, that many accident costs are not required to be reported under the RMP accident reporting provisions (40 CFR 68.42(b)) and thus are not reflected in the data. These include responder costs, transaction costs, property value reductions, unmonetized costs of evacuations and sheltering-in-place, the costs of potential health effects, and productivity losses, among others.[15] In addition, some accidents that occurred at RMP facilities during the five-year period were not reported to EPA because the facility either closed after the accident, decommissioned the process, or removed the regulated substance from the process involved in the accident before it was required to submit a report to the RMP Database. For example, the Philadelphia Energy Solutions (PES) Refining and Marketing LLC facility in Philadelphia, PA, had a fire and explosions in the PES Girard Point refinery hydrofluoric acid (HF) alkylation unit on June 21, 2019, which resulted in the release of HF.[16] This facility deregistered the affected process before the deadline for their subsequent RMP report. Due to the omission of such accidents and the omission of the cost categories listed in the beginning of this paragraph, the monetized costs of RMP accidents to society underestimate the number and magnitude of RMP chemical accidents. Nonetheless, EPA expects that some portion of future damages will be prevented through implementation of the final rule. Table 3 presents a summary of the quantified damages identified in the analysis.

TABLE 3—SUMMARY OF QUANTIFIED DAMAGES

[Millions, 2022 dollars]

	Unit value	5-Year total	Average/ year	Average/ accident
On site				
Fatalities	$10.4	$187.9	$37.57	$0.38
Injuries	0.05	28.75	5.75	0.06
Property Damage	.....	2,273	454.58	4.66
Onsite Total	.....	2,489.49	497.90	5.10
Off site				
Fatalities	10.4	0.00	0.00	0.00
Hospitalizations	0.045	1.40	0.28	0.003
Medical Treatment	0.001	0.13	0.03	0.0003
Evacuations *	0.00	18.99	3.80	0.039
Sheltering in Place *	0.00	12.58	2.52	0.026
Property Damage	.....	178.55	35.71	0.37
Offsite Total	.....	211.66	42.33	0.43
Total	.....	2,701.14	540.23	5.54

* The unit value is $293 for evacuations and $147 for sheltering in place, so when expressed in rounded millions the value represented in the table is zero.

In total, EPA estimated monetized damages from RMP facility accidents of $540.23 million per year, which are divided into onsite and offsite categories where possible. EPA estimated total, average annual onsite damages from chemical releases at RMP facilities of $497.90 million. The largest monetized category was onsite property damage, valued at $454.58 million. The next largest impacts were onsite fatalities ($37.57 million) and injuries ($5.75 million).

EPA estimated total, average annual offsite damages of $42.33 million. Property damage again was the highest value category, estimated at

[13] The Regulatory Flexibility Act defines small governments as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Most governmental RMP facilities are water and wastewater treatment systems and listed a city or county as the owner entity.

[14] EPA used the August 1, 2021, version of the RMP database to complete its analysis because under 40 CFR 68.195(a), facilities are required to report RMP accidents and specific associated information within six months to the RMP database. Therefore, the RMP database as of August 1, 2021, is expected to include RMP accidents and their specific associated information as of December 31, 2020. However, because accident data are reported to the RMP database by facility owners and operators, EPA acknowledges the likelihood of late-reported accidents affecting these last few years of data because some facilities may have not reported their RMP accidents as they are required to do. See sections 3.2 and 3.3 of the RIA for more on this and other limitations on the number and costs of baseline accidents.

[15] Further discussed in detail in Chapter 6 of the RIA.

[16] For a description of damages from this case see section 3.2.1 of the RIA and the CSB Report, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit, Factual Update, October 16, 2019, *https://www.phila.gov/media/20191204161826/US-CSB-PES-Factual-Update.pdf.*

approximately $35.71 million. In decreasing order, the next largest average annual offsite impact was from evacuations ($3.80 million), then sheltering in place ($2.52 million), hospitalizations ($0.28 million), and medical treatment ($0.03 million).

Regarding small entities, there were 86 accidents at facilities owned by small entities in the 2016–2020 period, or about 18 percent of all accidents.[17] These accidents cost $141.14 million in total over the 5-years, with an average cost of $28.23 million per year, and average per accident cost of $0.29 million. These accidents costs represent about 5% of the costs of all accidents.

EPA also evaluated the range of significant baseline damages in Table 3 that could not be quantified. These damages include major catastrophic releases, potential health risks from toxic chemical exposure, lost productivity at affected facilities, emergency response costs, transaction costs from potential subsequent legal battles, property value losses in nearby neighborhoods, environmental damage, unquantified costs of evacuation and sheltering-in-place events, and others. They have not been quantified because there is either limited or no information in the RMP data. However, in some cases, these damages could be even more detrimental to the facility and community than those damages that can be quantified. For example, regarding lost productivity, costs are highly variable based on the type of release, the extent of the damage, the location of the facility, and product being produced. Yet, Marsh Specialty, a risk management and energy consultancy, has collected data on 10,000 accidents in the petrochemical sector over 40 years and published 27 editions of its ''100 Largest Losses'' reports.[18] The data suggest that lost productivity may range from zero to four to five is typically two to three times the cost of property damage.[19] Another example of unquantified impacts can be examined with property value impacts. A recent hedonic property value analysis has examined the impact of RMP facility accidents on residential property values (Guignet et al. 2023a, b).[20] The analysis found that accidents with only onsite impacts reduced nearby property values between zero and two percent. However, accidents with impacts that occurred offsite, including fatalities, hospitalizations, people in need of medical treatment, evacuations, sheltering in place events, and/or property and environmental damage, reduced home values by two to three percent. The lower values persisted for about 10 to 12 years on average. The paper estimates an average loss of $5,350 per home in 2021-year values. Aggregating across the communities near the 661 facilities that experienced an offsite impact accident in their data, they calculate a total $39.5 billion loss.

Further, the five-year baseline period included in this analysis ($540 million per year) does not include a major catastrophe. In enacting section 112(r), Congress was focused on catastrophic accidents such as Union Carbide-Bhopal, which are extremely rare, but very high consequence events. The large chemical facility accidents that have occurred in the U.S. and Europe have not approached this level of damage, although it is possible that could happen. As mentioned previously, one of the most consequential accidents in the U.S.,[21] the explosion at the Phillips facility in Pasadena, TX, in 1989, killed 23 workers ($239 million in 2022 dollars), injured at least 150 more ($7.5 million), and caused $1.8 billion in property damage. These baseline damages are discussed in greater detail in Chapter 6 of the RIA.

3. Summary of Estimated Benefits

RMP accident data show past accidents have generated highly variable impacts, so the impacts of future accidents are difficult to predict. Nevertheless, it is clear from RMP accident data [22] and other relevant data from RMP regulated industry sectors,[23] that chemical accidents can impose substantial costs on firms, employees, emergency responders, the community, and the broader economy. Notwithstanding EPA's current rules, RMP accidents have continued to occur. EPA anticipates that promulgation and implementation of this final rule will improve the health and safety protection provided by the RMP rule and result in a reduced frequency and magnitude of damages from releases, including damages that are quantified in Table 3 such as fatalities, injuries, property damage, hospitalizations, medical treatment, sheltering in place, and so on. EPA also expects that the final rule provisions will reduce baseline damages that are not quantified in Table 3 such as lost productivity, responder costs, property value reductions, damages from catastrophes, transaction costs, environmental impacts, and so on. Although EPA was unable to quantify the reductions in damages that may occur as a result of the final rule provisions, EPA expects that a portion of future damages will be prevented by the final rule.[24] Table 4 summarizes five broad social benefit categories related to accident prevention and mitigation, including prevention of RMP accidents, mitigation of RMP accidents, prevention and mitigation of non-RMP accidents at RMP facilities, and prevention of major catastrophes. The table explains each and identifies thirteen associated specific benefit categories, ranging from avoided fatalities to avoided emergency response costs.

[17] There are accidents at 97 facilities that were not matched in the small entity analysis, so it is not possible to determine if they are owned by small or large entities with the data EPA has.

[18] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

[19] Marsh JLT Specialty, ''100 Largest Losses 1974–2015: Large property damage losses in the hydrocarbon industry,'' 24th Edition, March 2016. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry and in a few cases, business loss costs.

[20] Guignet, Dennis, Robin R. Jenkins, Christoph Nolte, and James Belke. 2023a. The External Costs of Industrial Chemical Accidents: A Nationwide Property Value Study. *Journal of Housing Economics.* 62 (2023) 101954.

[21] As compared to consequences resulting from RMP accidents 2004–2020 listed in Appendix A of the Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[22] EPA estimated monetized damages from RMP facility accidents of $540.23 million per year.

[23] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

[24] For the discussion of how final rule provisions are intended to lower the likelihood of future accidents of the same or similar type, see section 6.1.1 of the RIA.

TABLE 4—SUMMARY OF SOCIAL BENEFITS OF FINAL RULE PROVISIONS

Broad benefit category	Explanation	Specific benefit categories
Accident Prevention	Prevention of future RMP facility accidents	• Reduced Fatalities. • Reduced Injuries. • Reduced Property Damage. • Fewer People Sheltered-in-Place.
Accident Mitigation	Mitigation of future RMP facility accidents.	• Fewer Evacuations. • Avoided Health Risks from Exposure to Toxics.
Non-RMP Accident Prevention and Mitigation	Prevention and mitigation of future non-RMP accidents at RMP facilities.	• Avoided Lost Productivity. • Avoided Emergency Response Costs. • Avoided Transaction Costs. • Avoided Property Value Impacts.*
Avoided Catastrophes	Prevention of rare but extremely high consequence events.	• Avoided Environmental Impacts.
Information Availability	Provision of information to the public and emergency responders.	• Improved Efficiency of Property Markets. • Improved Resource Allocation.

*These impacts partially overlap with several other categories.

For details on how quantified benefits were estimated or discussion on unquantified benefits, including the difficulty in their quantification see Chapter 6 of the RIA.

When considering this final rule's likely benefits of this of avoiding some portion of the monetized accident impacts, as well as the additional nonmonetized benefits, EPA believes the costs of the rule are reasonable in comparison to its expected benefits. When assessing the reasonableness of the benefits and burdens of various regulatory options, EPA places weight on both preventing more common accidental releases captured in the accident history portion of the RMP database while also placing weight on less quantifiable potential catastrophic events. The Agency's judgment as to what regulations are ''reasonable'' is informed by both quantifiable and unquantifiable burdens and benefits.

III. Background

A. Overview of EPA's Risk Management Program

EPA originally issued the RMP regulations in two stages. First, the Agency published the list of regulated substances and TQs in 1994: ''List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions Under Section 112(r) of the Clean Air Act as Amended'' (59 FR 4478, January 31, 1994), hereinafter referred to as the ''list rule.'' [25] The Agency then published the RMP regulations, containing risk management requirements for covered sources, in 1996: ''Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)'' (61 FR 31668, June 20, 1996), hereinafter referred to as the ''1996 RMP rule.'' [26] [27] Subsequent modifications to the list rule and the 1996 RMP rule were made as discussed in the 2017 amendments rule (''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act''; 82 FR 4594 at 4600, January 13, 2017, hereinafter referred to as the ''2017 amendments rule''). In addition to requiring implementation of management program elements, the RMP rule requires any covered source to submit (to EPA) a document summarizing the source's risk management program—called a risk management plan (or RMP).

Prior to development of EPA's 1996 RMP rule, the Occupational Safety and Health Administration (OSHA) published its Process Safety Management (PSM) standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 Clean Air Act Amendments (CAAA), using its authority under 29 U.S.C. 653. The OSHA PSM standard can be found in 29 CFR 1910.119. Both the OSHA PSM standard and EPA's RMP rule aim to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and management practices.

EPA's RMP requirements include conducting a worst-case scenario analysis and a review of accident history, coordinating emergency response procedures with local response organizations, conducting a hazard assessment, documenting a management system, implementing a prevention program and an emergency response program, and submitting a risk management plan that addresses all aspects of the RMP for all covered processes and chemicals. A process at a source is covered under one of three different prevention programs (Program 1, Program 2, or Program 3) based directly or indirectly on the threat posed to the community and the environment. Program 1 has minimal requirements and is for processes that have not had an accidental release with offsite consequences in the last 5 years before submission of the source's risk management plan, and that have no public receptors within the worst-case release scenario vulnerable zone for the process. Program 3 applies to processes not eligible for Program 1, has the most requirements, and applies to processes covered by the OSHA PSM standard or classified in specified industrial sectors. Program 2 has fewer requirements than Program 3 and applies to any process not covered under Programs 1 or 3. Programs 2 and 3 both require a hazard assessment, a prevention program, and an emergency response program, although Program 2 requirements are less extensive and more streamlined. For example, the Program 2 prevention program was intended to cover, in many cases, simpler processes at smaller businesses and does not require the following process safety elements: management of change, pre-startup review, contractors, employee participation, and hot work permits. The Program 3 prevention program is similar to the OSHA PSM standard and designed to cover those processes in the

[25] Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A–91–74.

[26] Documents and information related to development of the 1996 RMP rule can be found in EPA docket number A–91–73.

[27] The regulation at 40 CFR part 68 applies to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

chemical industry. EPA notes that nothing in this final rule changes the applicability determinations or designations of whether a process at a stationary source is covered under one of the three different prevention programs.

B. Events Leading to This Action

On January 13, 2017, EPA published amendments to the RMP rule (82 FR 4594). The 2017 amendments rule was prompted by E.O. 13650, ''Improving Chemical Facility Safety and Security,'' [28] which directed EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements (STAA, incident investigation root cause analysis, and third-party compliance audits); emergency response coordination with local responders (including emergency response exercises); and availability of information to the public. EPA received three petitions for reconsideration of the 2017 amendments rule under CAA section 307(d)(7)(B).[29] In December 2019, EPA finalized revisions to the RMP regulations to reconsider the rule changes made in January 2017 (''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' 84 FR 69834, December 19, 2019, hereinafter referred to as the ''2019 reconsideration rule''). The 2019 reconsideration rule rescinded certain information disclosure provisions of the 2017 amendments rule, removed most new accident prevention requirements added by the 2017 amendments rule, and modified some other provisions of the 2017 amendments rule. The rule changes made by the 2019 reconsideration rule reflect the current RMP regulations to date. There are petitions for judicial review of both the 2017 amendments and the 2019 reconsideration rules. The 2019 reconsideration rule challenges are being held in abeyance until March 1, 2024, by which time the parties must submit motions to govern. The case against the 2017 amendments rule is in abeyance pending resolution of the 2019 reconsideration rule case.

On January 20, 2021, President Biden issued E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the ClimateCrisis.'' [30] E.O. 13990 directed Federal agencies to review existing regulations and take action to address priorities established by the Biden Administration, which include bolstering resilience to the impacts of climate change and prioritizing EJ. As a result, EPA was tasked to review the current RMP regulations.

While the Agency reviewed the RMP rule under E.O. 13990, the E.O. did not specifically direct EPA to publish a solicitation for comment or information from the public. Nevertheless, EPA held virtual public listening sessions on June 16 and July 8, 2021, and had an open docket for public comment (86 FR 28828, May 28, 2021). In the request for public comment, the Agency asked for information on the adequacy of revisions to the RMP regulations completed since 2017, incorporating consideration of climate change risks and impacts into the regulations and expanding the application of EJ. EPA received a total of 27,828 public comments in response to the request for comments. This included 27,720 received at regulations.gov,[31] 35 provided during the listening session on June 16, 2021,[32] and 73 provided during the listening session on July 8, 2021.[33] Most of the comments received in the docket were copies of form letters related to four different form letter campaigns. The remaining comments included 302 submissions containing unique content. Of the 302 unique submissions, a total of 163 were deemed to be substantive (*i.e.,* the commenters presented both a position and a reasoned argument in support of the position). Information collected through these comments informed the proposal.

EPA published the ''RMP Safer Communities by Chemical Accident Prevention,'' (SCCAP) proposed rulemaking on August 31, 2022 (87 FR 53556), hereinafter referred to as the ''2022 SCCAP proposed rule.'' The 2022 SCCAP proposed rule included several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, improvements to the public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. EPA hosted virtual public hearings on September 26, 27, and 28, 2022 to provide interested parties the opportunity to present data, views or arguments concerning the proposed action.

EPA received a total of 494 discrete public comments deemed as substantive (*i.e.,* the commenters presented both a position and a reasoned argument in support of the position) on the proposed rulemaking. Of the 494 comments, 370 were written submitted comments and 124 were from members of the public that provided verbal comments at the public hearings on September 26, 27, and 28, 2022. Of the 370, 142 were from 101 unique organizations, 6 were the result of various mass mail campaigns and contained numerous copies of letters or petition signatures (approximately 57,505 letters and signatures were contained in these several comments), and 31 were from individual citizens. Discussion of public comments can be found in topics included in this final rule and in the Response to Comments document,[34] available in the docket for this rulemaking.

The notice of proposed rulemaking (NPRM) discussed how the various proposed provisions amendments to the RMP rule were not only integrated, reinforcing, and complementary but also how each was merited on its own and severable. 87 FR 53566 (August 31, 2022). For example, EPA noted that new substantive prevention requirements like STAA and third-party audits triggered by NAICS, location, and accident history were reinforced by provisions like local information access and enhanced employee participation. Nevertheless, in the body of the preamble for the 2022 SCCAP proposed rule, the Agency explained how each of these provisions would help prevent accidents and improve release mitigation and emergency response on its own merits.

C. EPA's Authority To Revise the RMP Rule

The statutory authority for this action is provided by CAA section 112(r) (42 U.S.C. 7412(r)). Each of the portions of the RMP regulations we are amending in this action are based on EPA's rulemaking authority under CAA section 112(r)(7). Under CAA section 112(r)(7)(A), EPA may set rules addressing the prevention, detection, and correction of accidental releases of substances listed by EPA (''regulated

[28] *https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security.*

[29] *https://www.epa.gov/petitions/petitions-office-land-and-emergency-management.*

[30] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/.*

[31] EPA–HQ–OLEM–2021–0312.

[32] EPA–HQ–OLEM–2021–0312–0011.

[33] EPA–HQ–OLEM–2021–0312–0020.

[34] 2023. EPA Response to Comments on the 2022 SCCAP Proposed Rule (August 31, 2022; 87 FR 53556). This document is available in the docket for this rulemaking.

substances'' listed in the tables 1 through 4 to 40 CFR 68.130). Such rules may include requirements related to monitoring, data collection, training, design, equipment, work practice, and operations. In promulgating its regulations, EPA may draw distinctions between types, classes, and kinds of facilities by taking into consideration various factors including size and location. A more detailed discussion of the underlying statutory authority for the current RMP regulations appears in the initial 1993 action that proposed the RMP regulations (58 FR 54190–3, October 20, 1993).

Under CAA 112(r)(7)(B)(i), Congress authorized EPA to develop ''reasonable regulations and appropriate guidance'' that provide for the prevention and detection of accidental releases and the response to such releases, ''to the greatest extent practicable.'' Congress required an initial rulemaking under this paragraph by November 15, 1993. Section 112(r)(7)(B) sets out a series of mandatory subjects to address, interagency consultation requirements, and discretionary provisions that allowed EPA to tailor requirements to make them reasonable and practicable. The prevention program provisions discussed in this action (hazard evaluations of natural hazards, power loss and stationary source siting, safer technologies and alternatives analysis, root cause analysis incident investigation, third party compliance auditing, and employee participation) derive from EPA's authority to promulgate reasonable regulations for the ''prevention and detection of accidental releases'' (CAA section 112(r)(7)(B)(i)). Similarly, the emergency coordination and exercises provisions in this rule derive from EPA's authority to promulgate reasonable regulations to address ''response to such [accidental] releases by the owners or operators of the source of such releases'' Id. Section 112(r)(7)(B)(i) calls for EPA's regulations to recognize differences in ''size, operations, processes, class and categories of sources.'' For that reason, this action maintains distinctions in prevention program levels and in response actions authorized by this provision. Finally, the information availability provisions discussed in this action generally assist in the development of ''procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment.'' Id. These information availability provisions include requirements to disclose information to the public within a 6-mile radius of sources, and are designed to ensure that emergency plans for impacts on the community are based on more relevant and accurate information than would otherwise be available and ensures that the public can become an informed participant in such emergency planning. Also, as noted in the 2022 SCCAP proposed rule, requiring that information be made available to the public strengthens the prevention program by leveraging public oversight of facilities—especially prevention provisions that are triggered by source-specific accident history (87 FR 53566, August 31, 2022).

This rulemaking action finalizes substantive amendments to 40 CFR part 68 and is authorized by CAA sections 112(r)(7)(A) and (B), as explained in more detail in the proposed action (87 FR 53563–6), and as explained herein. In considering whether it is legally permissible for EPA to modify provisions of the RMP regulations while continuing to meet its obligations under CAA section 112(r), the Agency notes that it has made discretionary amendments to the 1996 RMP rule several times without dispute over its authority to issue discretionary amendments. (See 64 FR 640, January 6, 1999; 64 FR 28696, May 26, 1999; 69 FR 18819, April 9, 2004.) According to the decision in *Air Alliance Houston* v. *EPA,* 906 F.3d 1049 (D.C. Cir. 2018), ''EPA retains the authority under Section 7412(r)(7) [CAA section 112(r)(7)] to substantively amend the programmatic requirements of the [2017 RMP amendments] . . . subject to arbitrary and capricious review'' (906 F.3d at 1066). Therefore, EPA is authorized to modify the provisions of the current RMP regulations if it finds that it is reasonable to do so.[35]

The Supreme Court has also recognized that agencies have broad discretion to reconsider a regulation at any time so long as the changes in policy are ''permissible under the statute, . . . there are good reasons for [them], and that the agency believes [them] to be better'' than prior policies. (See *Federal Communications Commission* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); emphasis in quote original.[36]) As explained in detail above and throughout this notice, the policy changes finalized in this action are permissible under the statute.

Additionally, there are good reasons for the policies adopted in this rule. Accidental releases remain a significant concern to communities and cost society more than $540 million yearly.[37] EPA monetized both onsite and offsite damages from RMP facility accidents from 2016–2020,[38] when possible, to determine this amount. It is important to note, however, that many accident costs are not required to be reported under the RMP accident reporting provisions (40 CFR 68.42(b)) and thus are not reflected in the data. These include responder costs, transaction costs, property value reductions, unmonetized costs of evacuations and sheltering-in-place, the costs of potential health risks from exposure to toxic chemicals, and productivity losses, among others.[39] As mentioned previously, some accidents that occurred at RMP facilities during the five-year period were not reported to EPA because the facility either closed after the accident, decommissioned the process, or removed the regulated substance from the process involved in the accident before it was required to submit a report to the RMP Database. For example, the Philadelphia Energy

[35] See *Motor Vehicle Manufacturers. Association of the United States, Inc.* v. *State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29 (1983). In addressing the standard of review to reconsider a regulation, the Supreme Court stated that the rescission or modification of safety standards ''is subject to the same test'' as the ''agency's action in promulgating such standards [and] may be set aside if found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' '' (463 U.S. at 41, quoting 5 U.S.C. 706). The same standard that applies to the promulgation of a rule applies to the modification or rescission of that rule.

[36] The full quote from *Fox* states: ''But [the Agency] need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates'' (*Federal Communications Commission* v. *Fox Television Stations, Inc.,* 556 U.S. at 515; emphasis original).

[37] A full description of costs and benefits for this final rule can be found in the Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

[38] Due to a lack of alternative data describing RMP accident impacts more comprehensively, EPA chose this five-year dataset to reflect the most recent trends regarding RMP accidents. EPA used the August 1, 2021, version of the RMP database to complete its analysis because under 40 CFR 68.195(a), facilities are required to report RMP accidents and specific associated information within six months to the RMP database. Therefore, the RMP database as of August 1, 2021, is expected to include RMP accidents and their specific associated information as of December 31, 2020. However, because accident data are reported to the RMP database by facility owners and operators, EPA acknowledges the likelihood of late-reported accidents affecting these last few years of data because some facilities may have not reported their RMP accidents as they are required to do. See sections 3.2 and 3.3 of the RIA for more on this and other limitations on the number and costs of baseline accidents.

[39] Further discussed in detail in Chapter 6 of the RIA.

Solutions Refining and Marketing LLC facility in Philadelphia, PA, had a fire and explosions in the PES Girard Point refinery HF alkylation unit on June 21, 2019, which resulted in the release of HF.[40] This facility deregistered the affected process before the deadline for their subsequent RMP report. Due to the omission of such accidents and the omission of the cost categories listed in the beginning of this paragraph, the monetized costs of RMP accidents to society underestimate the number and magnitude of RMP chemical accidents.

EPA estimated total average annual onsite damages of $497.9 million. The largest monetized, average annual, onsite damage category was property damage, which resulted in average annual damage of approximately $454.58 million. The next largest impact was onsite fatalities ($37.57 million) and injuries ($5.75 million). EPA estimated total average annual offsite damages of $42.33 million. The largest monetized, average annual, offsite damage category was property damage, which resulted in average annual damage of approximately $35.71 million. The next largest impact was from evacuations ($3.80 million), sheltering in place ($2.52 million), hospitalizations ($0.28 million), and medical treatment ($0.03 million).

The risk of being impacted by an accidental release is even more apparent in communities where multiple RMP facilities are in close proximity to residential areas.[41] The 2022 SCCAP proposed rule not only discussed data demonstrating this elevated risk, but also noted that a higher frequency of accidental releases in such communities is consistent with the common-sense notion that, while accidental releases are low-probability, high consequence events, the more facilities near a community, the higher the likelihood that the community will be faced with such an event, or multiple events (all other factors being equal). Lowering the probability and magnitude of accidents by putting more of a focus on prevention reduces the risks posed by these RMP facilities,[42] which is one of the objectives of the present RMP amendments.

EPA received various comments indicating that EPA has appropriate authority to revise RMP regulations. For the reasons stated directly above and throughout the proposal where we outline EPA's statutory authority under CAA section 112(r)(7), EPA agrees with these comments. Conversely, EPA also received comments that EPA is exceeding its statutory authority because it does not have jurisdiction over worker safety issues. EPA disagrees that it has exceeded its statutory authority in this way in this rulemaking. EPA acknowledges that both EPA and OSHA have separate mandates under the Occupational Safety and Health Act (29 U.S.C. 651), the CAA, and the requirements enacted in the CAAA. In the 1990s, both Agencies fulfilled their mandatory duties to promulgate and issue the rules required by CAA sections 112(r)(3)–(5) and 112(r)(7)(B), as well as section 304 of the CAAA. The focus of OSHA's regulations in the PSM standard is on workplace safety, while EPA's focus in the RMP regulations has been primarily on minimizing the public impacts of accidental releases through prevention and response. This rule maintains EPA's focus on minimizing the public impacts of accidental releases even as it also reduces impacts on facilities and workers. As explained throughout the proposal and in this final action, the OSHA PSM standard and EPA RMP regulations are closely aligned in content, policy interpretations, and enforcement. This is not surprising, as accident prevention steps that make a process safe for workers often will be similar, or the same as, steps that would prevent deleterious impacts on the public. Congress recognized this relationship by requiring EPA to coordinate its requirements with those of OSHA in developing accident prevention regulations and requiring OSHA to coordinate with EPA when developing its PSM standard (see CAA section 112(r)(7)(D) and CAAA section 304(a)). Therefore, since the inception of these regulations, EPA and OSHA have coordinated closely on their implementation in order to minimize regulatory burden and avoid conflicting requirements for regulated facilities. This coordination has continued throughout the development of this rule and is explained further in the relevant sections below.

A couple of commenters called on EPA to exercise its ''full statutory authority'' to issue measures that prevent disasters '' 'to the greatest extent practicable.' ''EPA disagrees with these comments. As mentioned above, while EPA is authorized to promulgate regulations that provide for the prevention and detection of accidental releases to the greatest extent practicable, so too must these regulations be reasonable. The relevant statutory phrase describing EPA's authority to regulate under CAA section 112(r)(7)(B)(i), authorizes ''reasonable regulations . . . to provide, to the greatest extent practicable,'' for the prevention and detection of and response to accidental releases of substances listed in 40 CFR 68.130. EPA interprets the term ''practicable'' in this context to include concepts such as cost-effectiveness of the regulatory and implementation approach, as well as the availability of relevant technical expertise and resources to the implementing and enforcement agencies and the owners and operators who must comply with the rule. Further, an interpretation of the statute that does not give meaning to the qualifier ''reasonable'' to the authority to regulate ''to the greatest extent practicable,'' as the commenters suggest, would be inconsistent with the structure of the statute. The terms ''reasonable'' and ''practicable'' operate both as authorization for EPA's regulations and as limitations on the scope of EPA's authority under CAA section 112(r)(7)(B)(i), while the phrase ''greatest extent practicable'' directs EPA to select the regulatory option that ''provide[s] the greatest level of practicable protection'' from ''among those regulatory options that are reasonable.'' 84 FR 69849 (Dec. 19, 2019); see also 87 FR 53566 (Aug. 31, 2022). To the extent both the 2019 compliance-driven and the 2022 rule-based, prevention-focused approaches are reasonable, the approach of this final rule would be more protective and therefore be '' 'to the greatest extent practicable' among the reasonable approaches.''

As recognized by the Supreme Court in *Michigan* v. *EPA,* 135 S. Ct. 2699, 2707 (2015), ''reasonable regulation'' generally involves some sort of examination of the benefits and the burdens of a rule. Nevertheless, the Court in *Michigan* v. *EPA* did not mandate a strict analysis of quantified

[40] For a description of damages from this case see section 3.2.1 of the RIA and the CSB Report, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit, Factual Update, October 16, 2019, *https://www.phila.gov/media/20191204161826/US-CSB-PES-Factual-Update.pdf.*

[41] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[42] EPA notes that the two industrial sectors that are the focus of more requirements under the SCCAP rule, petroleum refineries (NAICS 324) and chemical manufacturers (NAICS 325) have been responsible for 42% of the accidental releases in the RMP database over the years 2016–2020. Approximately 83% of the costs of RMP accidental releases during 2016–2020 are attributed to these sectors. More details on the number and costs of baseline RMP accidents can be found in the Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

cost and benefits and limit the Agency to adopting only those measures that have quantified costs exceeding benefits. In assessing the types of benefits EPA should consider in a rulemaking under CAA 112(r)(7), EPA recognizes that a major purpose of the accidental release provisions of the CAA is to help mitigate and prevent large scale catastrophic incidents that are rare and therefore difficult to quantify.[43] Both the Senate and the House committee reports on the CAAA specifically identify the Union Carbide-Bhopal incident as one that demonstrated the need for the accidental release prevention provision (House Report at 155–57; Senate Report at 134–35, 143–44). The congressional reports and floor debates also cite an EPA study identifying 17 events that, based only the volume and toxicity of the chemicals involved (and not accounting for factors such as location, climate, and operating conditions) had the potential for more damage than the Union Carbide-Bhopal incident.[44] Therefore, when assessing the reasonableness of the benefits and burdens of various regulatory options, EPA places weight on both preventing more common accidental releases captured in the accident history portion of the RMP database while also placing weight on less quantifiable potential catastrophic events. Our judgment as to what regulations are ''reasonable'' is informed by both quantifiable and unquantifiable burdens and benefits.

The fact that accidents continue to occur shows that we still have reason to exercise statutory authority to promulgate reasonable regulations to provide for the prevention and detection of those accidents to the greatest extent practicable when the opportunity exists to improve the performance of our regulatory program. In determining what is ''reasonable'' when developing regulations under CAA section 112(r)(7)(B), EPA acknowledges that some facilities are less likely to have an accidental release than others and that the statute gives the Agency the authority to distinguish among classes of facilities. When developing this rulemaking, EPA therefore had the authority to include multiple factors when determining what is reasonable, such as frequency of RMP accidents or proximity to both nearby communities and other RMP facilities that could, as a result, make the communities and other facilities be more susceptible when it comes to being exposed to a worst-case scenario. For example, as mentioned in the proposed rulemaking, the per facility accident rate between 2016 and 2020[45] for all regulated facilities was 3 percent (n = 382 facilities reporting at least one accident out of 12,855 unique facilities reporting between 2016 and 2020), the sector accident rates (number of unique facilities with accidents per sector divided by the number of unique facilities in each sector) for petroleum and coal manufacturing were seven times higher (23 percent, n = 41 out of 177) and two times higher for chemical manufacturing (6 percent, n = 96 out of 1631). Also, based on accidents occurring between 2016 and 2020, communities located near facilities in NAICS 324/325 that are located within 1 mile of another 324/325 facility are 1.5 times more likely to have been exposed to accidents at these facilities as compared to communities near facilities in NAICS 324/325 that are not located within 1 mile of another 324/325 facility (87 FR 53578).[46] Also mentioned in the proposed rulemaking, these surrounding communities would benefit from rule-based prevention prior to incidents, rather than the case-by-case oversight approach of the 2019 reconsideration rule (87 FR 53565). Therefore, EPA now believes the benefits of rule-based prevention for certain high-risk classes of facilities could help prevent high consequence accidents that affect communities and are therefore reasonable and necessary to meet the statutory objective ''to the greatest extent practicable.''

As mentioned in the proposed rulemaking, in contrast to the approach in the 2019 reconsideration rule, the approach taken in this action for the new prevention program provisions—STAA, root cause analysis incident investigation (RCA), and third-party compliance audits—refines the focused regulatory approach found in the 2017 amendments rule, and finalizes provisions to better identify risky facilities to prevent accidental releases before they can occur. As explained in further detail in following sections of this preamble, EPA therefore maintains that by taking a rule-based, prevention-focused approach in this action rather than the so-called ''compliance-driven'' approach in the 2019 reconsideration rule, this rule will further protect human health and the environment from chemical hazards through process safety advancement without undue burden. Similarly, other modifications to approaches adopted in 2019 to information disclosure and emergency response will also better balance security concerns with improved community awareness and lead to better community preparedness for accidents. By contrast with the prior approach, the approach of this final rule is expected to be both reasonable and more protective, and thus provide for release prevention, detection, and response to the greatest extent practicable. EPA has determined, based on the updated factual and scientific record now before the agency, including a thorough evaluation of public comments, and in view of its statutory responsibilty and legal authority, to be the approach it needs to take, among the potentially available or reasonable approaches.

IV. Discussion of General Comments

This section of this preamble focuses on general comments on the 2022 SCCAP proposed rule in its entirety and EPA's response to those comments. Comments and discussion on provision-specific topics can be found under each individual provision heading. Comments received on additional considerations posed in the 2022 SCCAP proposed rule but outside the scope of this rulemaking are included the Response to Comments document,[47] available in the docket for this

[43] Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

[44] Senate Report at 135; House Report at 155; Representative Richardson, 136 Congressional Record 35082 (1990) (statement of Representative Richardson); 136 Congressional Record 36057 (1990) (statement of Senator Durenberger).

[45] Due to a lack of alternative data describing RMP accident impacts more comprehensively, EPA chose this five-year dataset to reflect the most recent trends regarding RMP accidents. EPA used the August 1, 2021, version of the RMP database to complete its analysis because under 40 CFR 68.195(a), facilities are required to report RMP accidents and specific associated information within six months to the RMP database. Therefore, the RMP database as of August 1, 2021, is expected to include RMP accidents and their specific associated information as of December 31, 2020. However, because accident data are reported to the RMP database by facility owners and operators, EPA acknowledges the likelihood of late-reported accidents affecting these last few years of data because some facilities may have not reported their RMP accidents as they are required to do. While some commenters have suggested that late reporting may impact the count of total accidents in recent years, neither the commenters nor EPA have identified any impacts of late reporting on the distribution of accidents by sector. See sections 3.2 and 3.3 of the RIA for more on this and other limitations on the number and costs of baseline accidents.

[46] In the 2022 SCCAP proposed rule, EPA acknowledged the likelihood of late-reported accidents affecting the last few years of data. Based on its prior experience, EPA judged that there would be a slight increase in the number of accidents in the last few years of data.

[47] 2023. EPA Response to Comments on the 2022 SCCAP Proposed Rule (August 31, 2022; 87 FR 53556). This document is available in the docket for this rulemaking.

rulemaking.[48] In the proposal EPA acknowledged the need for reviewing the list of RMP-regulated substances. Section 112(r)(3) requires periodic review of the RMP regulated substance list. A priority chemical for EPA's upcoming review will be ammonium nitrate. EPA continues to review the stakeholder input from this solicitation.

A. General Comments

Many commenters provided general comments about the proposed rulemaking. Several commenters supported EPA's proposed rule, including some offering suggestions for improvement. Several commenters requested EPA consider making the proposed rule stronger than it is currently written. Several of these commenters provided detailed examples of recent accidents and incidents, including health impacts to the community, dating back to 2004 that they hope stronger RMP regulations would prevent. A few commenters provided additional steps EPA should take in tandem with the proposed rule. Another commenter stated that the current process puts the onus on community members in close proximity to facilities to protect themselves when it is EPA's responsibility to regulate these facilities and ensure that the public is safe. The commenter noted that there needs to be more enforcement by the Federal Government to hold facilities accountable, especially in States lacking enforcement. Several commenters stated that the proposed rule relies too much on voluntary commitments from RMP facilities. One commenter noted that the current process remains reactive rather than proactive and corrective rather than preventative.

Several commenters opposed EPA's proposed rule, including some recommending that EPA withdraw the proposed rule. A few commenters opposed the proposed rule due to what the commenters asserted are vague standards and definitions that could create uncertainties. Several commenters stated that the new requirements under the 2022 SCCAP proposed rule would impose unnecessary burdens to facilities, including new training and analyses, higher costs, or lower effectiveness of the program. Several commenters asserted that there is no basis or evidence that the 2022 SCCAP proposed rule is necessary.

B. EPA Responses

EPA is finalizing several amendments to the RMP rule to further protect human health and the environment from RMP accidents. The final rule's emphasis is on protecting communities most at risk of having an accidental release from a facility in their midst. Under the final rule, facilities in these communities will be required to do more to prevent chemical accidents, including conducting an STAA, more thorough incident investigations, and third-party audits. The final rule also includes new prevention provisions that have not been addressed in prior RMP rules, including empowering workers to make safety decisions and report non-compliance. The Agency is also increasing access to RMP facility information for fenceline communities in commonly spoken languages. EPA believes this final rule promotes transparency and gives more opportunities for the public and workers to be involved in accident prevention and emergency planning. EPA believes that in most cases, facilities needing to adopt the finalized provisions from scratch are most likely facilities that have not fully developed strong programs to ensure their commitment to process safety; strengthening prevention and response programs at such facilities will help to prevent and minimize accidental releases of toxic and flammable regulated substances.

EPA disagrees that that there is no basis or evidence that the proposed rule is necessary. Congress charged EPA to promulgate reasonable regulations to provide to the greatest extent practicable for the prevention and detection of accidental releases. Even when EPA has discharged its mandatory duty under CAA section 112(r)(7)(B), the Agency retains the discretion to amend the regulations when they can be improved to further the intent of the statute. Therefore, when major concerning RMP accidents, including major accidents, continue to occur as they have,[49] it is EPA's responsibility to further protect human health and the environment, if there are reasonable opportunities to do so. Many of the amendments being finalized in this action, some stronger than what was proposed, were informed by commenters, including many that suffer the consequences of accidents occurring at RMP facilities or work in RMP-covered processes. The amendments are also informed by RMP accident data which indicate trends in accident occurrence. For example, as discussed in the proposal, recent accidents highlight that while the annual count of accidents decreased overall between 2016 and 2020, in 2019, the TPC Group (TPC) explosion and fire in Port Neches, Texas, reported the largest number of persons ever evacuated (50,000 people) as the result of an RMP-reportable incident, as well as $153 million in offsite property damage.[50] EPA did not conduct an inspection at TPC just prior to this accident because as indicated in the 2019 reconsideration rule, EPA prioritizes inspections at facilities that have had accidental releases. TPC had no recent prior RMP accidental release and was not otherwise due for inspection under EPA's routine oversight plan. Therefore, we believe our current enforcement resources, and even prioritizing inspections, are not capable of effectively addressing accident-prone facilities without additional regulatory requirements mandates.

While large events are rare, CAA section 112(r) was intended as a prevention program for large catastrophic releases as well as more common accidental releases. Post-event compliance measures such as outreach and enforcement are ''too little, too late'' for such large, but rare, events. Therefore, this final rule provides additional prevention program provisions reasonably calculated for stationary sources handling dangerous chemicals to prevent potentially catastrophic incidents. EPA therefore believes the provisions of this final rule will be generally effective to help improve chemical process safety by preventing accidents that result in harm and damage; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources. Thus, these are necessary updates to the existing RMP rule to ensure chemical accident prevention and mitigation. Further, while many of the provisions of this final rule reinforce each other, it is EPA's intent that each one is merited on its own, and they are thus severable.

[48] For example, one such consideration posed outside the scope of this rulemaking was the need for reviewing the list of RMP-regulated substances. EPA still acknowledges the need for reviewing the list and will consider received comments when determining whether to take further action on this issue.

[49] As part of this rule, EPA analyzed accidents from 2016 to 2020. The impacts of high consequence RMP-reportable accident events between 2016 and 2020 demonstrate the impact of low probability, high consequence events on annual averages. For more information see the Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule.

[50] The U.S. Chemical Safety Board's TPC incident investigation report outlines the safety issues contributing to the incident, conclusions, recommendations, and key lessons for the industry. *https://www.csb.gov/tpc-port-neches-explosions-and-fire/.*

EPA also believes that because of the performance-based nature of the regulation, and the similar nature of these amendments, the requirements provide facility owners with latitude in their methods of implementing the requirements. This type of regulation does not create uncertainties or unnecessary burdens, but rather offers reasonable flexibilities in adopting the most effective measures to prevent and mitigate accidents. For example, while EPA requires implementation of at least one practicable passive measure, or its equivalent, the new STAA requirements are not prescriptive in nature as to what a facility can choose as its measure. The rule gives facilities flexibility and allows facility owners and operators to exercise reasonable judgement to determine what technology or risk reduction measures work best for their particular chemical uses, processes, or facility. The final rule's emergency exercise requirements also give owners and operators significant flexibility in establishing exercise schedules and exercise scenarios. Other provisions of the final rule afford similar flexibilities.

EPA agrees assistance, outreach, and enforcement will help ensure compliance with the rule. For example, enforcement of the RMP regulation has and will continue to occur. Because of that fact, EPA expects most facilities will proactively make the necessary prevention improvements in order to comply with the rule and thus avoid enforcement. Enforcement of RMP facilities remains an Agency priority, as indicated by its adoption as a National Enforcement and Compliance Initiative (NECI) since 2017. The goal of this NECI is to reduce the risk to human health and the environment by decreasing the likelihood of chemical accidents. Activities under the initiative include having regulated facilities and industry associations work to improve safety; increase compliance with RMP; and promote coordination and communication with State and local responders and communities. The capacity built by the NECI will continue to benefit oversight by EPA and its partner implementing agencies even after the NECI. Furthermore, EPA intends to publish guidance for certain provisions, such as STAA, root cause analysis, third-party audits, and employee participation. Once these materials are complete, owners and operators can familiarize themselves with resources and best practices that EPA has gathered and found to be useful in helping to develop and maintain strong prevention programs. The Agency views these compliance activities as a complement to strong accidental release prevention and response, but they are not a substitute for the stronger prevention measures and response provisions set forth in the final rule.

V. Prevention Program Requirements

A. Hazard Evaluation Amplifications

1. Summary of Proposed Rulemaking

a. Natural Hazards, 40 CFR 68.50 and 68.67

EPA proposed to require that hazard evaluations under 40 CFR 68.50(a)(5) and 68.67(c)(8) explicitly address external events such as natural hazards, including those caused by climate change or other triggering events that could lead to an accidental release. EPA proposed to define natural hazards as naturally occurring events with the potential for negative impacts, including meteorological hazards due to weather and climate, as well as geological hazards.

In addition to the proposed approach, EPA requested comment on whether the Agency should specify geographic areas most at risk from climate or other natural events by adopting the list of areas exposed to heightened risk of wildfire, flooding storm surge, or coastal flooding. EPA further asked whether the Agency should require sources in areas exposed to heightened risk of wildfire, flooding, storm surge, coastal flooding, or earthquake, to conduct hazard evaluations associated with climate or earthquake as a minimum, while also requiring all sources to consider the potential for natural hazards unrelated to climate or earthquake in their specific locations.

b. Power Loss, 40 CFR 68.50 and 68.67

EPA proposed to require that hazard evaluations under 40 CFR 68.50(a)(3) and 68.67(c)(3) explicitly address the risk of power failure, as well as standby or emergency power systems. EPA also proposed to require that air pollution control or monitoring equipment associated with prevention and detection of accidental release from RMP-regulated processes have standby or backup power to ensure compliance with the intent of the rule. In addition to the proposed approach for standby or backup power for air pollution control or monitoring equipment, EPA requested comment on any potential safety issues associated with the requirement.

c. Stationary Source Siting, 40 CFR 68.50 and 68.67

EPA proposed to require that hazard evaluations under 40 CFR 68.50(a)(6) and 68.67(c)(5) explicitly define stationary source siting as inclusive of the placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors.

d. Hazard Evaluation Information Availability, 40 CFR 68.170 and 68.175

EPA proposed to require that risk management plans under 40 CFR 68.170(e)(7) and 68.175(e)(8) include declined natural hazard, power loss, and siting hazard evaluation recommendations and their associated justifications. In addition to the proposed approach, EPA requested comment on whether the Agency should require declined natural hazard, power loss, and siting hazard evaluation recommendations to be included in narrative form and whether the Agency should provide specific categories of recommendations for facilities to choose from when reporting or allowing the owner or operator to post this information online and provide a link to their information within their submitted RMP. Further, EPA requested comment on methods to provide justification for declining relevant hazard evaluation recommendations.

2. Summary of Final Rule

Based on comments on both the proposed options and alternative approaches presented, EPA is finalizing the proposed provisions with the following modifications:

- Revising the definition of ''natural hazards'' at 40 CFR 68.3 to mean meteorological, environmental, or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change.
- Revising the hazard evaluation regulatory text at 40 CFR 68.50(a)(5) and 68.67(c)(8) to focus amplifying language on natural hazards rather than ''external hazards'' and include ''exacerbate'' as an influence on an accidental release from natural hazards in addition to ''cause.'' EPA is also removing the description of climate change in this section of regulatory text because the definition of natural hazards at 40 CFR 68.3 now includes accounting for climate change.
- Revising 40 CFR 68.50(a)(3) and 68.67(c)(3) to require monitoring equipment associated with prevention and detection of accidental releases from covered processes to have standby or backup power.
- Revising 40 CFR 68.52(b)(9) and 68.69(a)(4) to require documentation of

removal of monitoring equipment associated with prevention and detection of accidental releases from covered processes during imminent natural hazards.

- Revising 40 CFR 68.50(a)(6) and 68.67(c)(5) to correct the technical term of ''facilities'' to ''stationary sources.''

3. Discussion of Comments and Basis for Final Rule Provisions

The discussion and basis for each provision is below. The section is organized by including comments and EPA's responses grouped by the various aspects of each provision the Agency received comments on (italicized headings). The same organization is used for the Discussion of Comments and Basis for Final Rule Provisions sections throughout this preamble.

a. Natural Hazards

EPA's Proposed Approach

i. Comments

Several commenters expressed support for EPA requiring facilities to conduct natural hazard assessments since natural hazards have the potential to initiate accidents at RMP facilities. A few commenters provided examples of natural disasters that have resulted in chemical accidents and stated that natural hazard assessments could better protect workers and surrounding communities from these types of incidents. One commenter suggested that EPA require that RMP facilities act to address all natural hazard threats as they will only worsen in the face of climate change. The commenter also suggested that the requirement should apply to all RMP facilities.

One commenter noted that improving the resilience of facilities to extreme weather events is warranted because of the direct, substantial, and cumulative risk to EJ communities with EJ concerns that are more likely to be located in areas susceptible to flooding. One commenter noted that EPA's findings on risks to facilities from natural hazards is consistent with States' and municipalities' analysis. The commenter noted that several States have already taken steps to require facilities to consider threats from extreme weather, including Massachusetts and New York. A couple of commenters expressed support for the inclusion of natural hazard analysis but recommended that EPA clarify the language in the proposed rule to better define natural hazards and climate-related hazards. One of the commenters suggested that the definition of natural hazard assessments provided in the Center for Chemical Process Safety's (CCPS), ''Guidelines for Hazard Evaluation Procedures,'' 3rd edition (2008) is suitable.

Several commenters expressed opposition to the inclusion of natural hazard assessments. For example, several commenters stated that EPA has not provided sufficient justification for these new requirements. One of the commenters stated that EPA has not indicated why the existing regulations are inadequate. Similarly, several commenters noted that facilities are managing natural hazards well, and therefore the commenters suggested that additional requirements are not necessary.

Several commenters noted that the number of accidental releases caused by natural hazards is small compared to other causes, and small compared to how many natural hazards occur daily, and therefore does not justify EPA adding additional requirements for assessing natural hazards or other external events. One of the commenters noted that the small number of accidents may be attributed to the effectiveness of existing regulations and voluntary measures regarding emergency planning.

Several commenters noted that the natural hazard assessment provisions are already considered in the process hazard analysis (PHA) or other current regulations and are, therefore, redundant. Several commenters indicated that the natural hazard provisions in the proposed rule overlap with or are redundant of existing OSHA regulations and recommended that EPA not conflict or compete with OSHA standards, as including them in EPA's rules would create duplicative work for facilities and introduce uneven enforcement between the two agencies.

Several commenters stated that the proposed natural hazard assessment provisions are overly burdensome to facilities. One of the commenters stated that EPA does not have authorization from Congress to transform the PHA program to include natural hazards ''caused by climate change or other triggering events.'' One commenter suggested that the determination of whether or not to implement additional layers of protection from natural hazards should be left to the facility and not subject to regulatory scrutiny.

One commenter stated that the reference to external events should be removed because it is an undefined and vague term. The commenter added that the proposed requirement that the PHA include natural hazards ''caused by climate change or other triggering events'' is overly broad in that it appears to include events that go well beyond the proposed definition of natural hazards. The commenter stated that these broadly defined and ambiguous terms in the regulatory text could lead to an infinite list of external events and associated recommendations from the PHA a facility must consider. The commenter urged that EPA must provide much-needed clarity and explanation for the proposed language.

ii. EPA Responses

EPA agrees that natural hazards are hazards for chemical facilities because they have the potential to initiate accidents that threaten human health and the environment and disagrees with comments that the Agency did not provide sufficient justification for the new requirements. In the proposal, the Agency provided data which indicate that, while not all, *some* RMP accidents are being reported as having a natural cause as the initiating event and include unusual weather conditions as a contributing factor.[51] EPA believes that adding clarifying language to a provision is a simple way to promote awareness of these potential accidents which should help prevent some. Additionally, EPA agrees that climate change increases the threat of extreme weather as a natural hazard and should be taken into account at covered facilities when evaluating hazard frequency and severity. EPA is finalizing the proposed provisions because the Agency believes that making the requirement more explicit to evaluate natural hazards, which includes taking into account climate change, in hazard evaluations for Program 2 and Program 3 RMP-regulated processes will ensure that the threats of natural hazards are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities. EPA agrees that doing so will better protect surrounding communities from these types of incidents.

In response to the comment that improving the resilience of facilities to extreme weather events is warranted due to the risk posed to communities with EJ concerns, EPA agrees that accidental releases of regulated chemicals from RMP-regulated facilities likely pose disproportionate risks to historically marginalized communities. EPA expects that the benefits of this clarified provision may lower potential exposure for fenceline communities with historically underserved and

[51] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

overburdened populations by reducing disproportionate damages that RMP-reportable accidents might otherwise inflict on those populations.

EPA agrees with the comment that the Agency's findings on risks to facilities from natural hazards are consistent with those of States that already require facilities to consider threats from extreme weather. However, because not all States require facilities to consider natural hazards, and because EPA continues to see natural hazards as a factor in RMP accidents, the Agency believes the requirement to evaluate and control natural hazards should be explicitly stated in the RMP regulation. Moreover, EPA notes that doing so is consistent with other countries that are also expanding efforts to address natural hazards at chemical facilities, as discussed in the 2022 SCCAP proposed rule (87 FR 53568).

In response to the comments requesting that EPA better define natural hazards and climate-related hazards, EPA notes that it has revised its definition to be more closely align with language used in the Federal Emergency Management Agency's (FEMA) National Risk Index (NRI) [52] and Climate Essentials for Emergency Managers [53] resources. For this final rule, EPA is defining natural hazards to mean meteorological, climatological, environmental, or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change. Examples of such hazards include, but are not limited to, avalanche, coastal flooding, cold wave, drought, earthquake, hail, heat wave, hurricane, ice storm, landslide, lightning, riverine flooding, strong wind, tornado, tsunami, volcanic activity, wildfire, and winter weather. EPA believes CCPS' definition and guidance [54] presented in the 2022 SCCAP proposed rule, is still useful for facilities' evaluation of natural hazards for process safety, however, the Agency believes these FEMA resources reflect a more comprehensive base to identify, evaluate and understand relative natural hazard risk, particularly how natural hazards must account for a changing climate. For example, the NRI identifies 18 specific natural hazards, which EPA has identified in its definition, that are further supported as their designation as natural hazards and are able to be represented in terms of expected annual loss, which incorporate data for exposure, annualized frequency, and historic loss ratio.[55] Additionally, the Climate Essentials for Emergency Managers points to many climate change resources including the Climate Risk & Resilience Portal [56] and the Climate Mapping for Adaption and Resilience Tool [57] that allows users to examine simulated future climate conditions associated with the natural hazards identified in the NRI.

EPA disagrees that the natural hazard assessment provisions are redundant and will result in uneven enforcement due to them already being considered in both the PHA requirements and current OSHA regulations. EPA's goal of this provision is to better reflect the Agency's longstanding regulatory requirement, rather than to impose additional regulatory requirements (and thus potential additional costs) that conflict with the OSHA PSM regulatory requirements. In fact, EPA has coordinated with OSHA throughout the rulemaking process to ensure the intent of adding explicit natural hazard regulatory text does not create conflicting requirements between the two regulatory programs.

In response to comments that the natural hazard assessment provisions are overly burdensome to facilities, and that the Agency does not have authorization from Congress to transform the PHA program to include natural hazards ''caused by climate change or other triggering events'', EPA disagrees. EPA has stated this provision makes more explicit what is already required in the RMP regulations. As noted in the proposed rule, since the 1996 RMP rule, EPA has said events such as floods and high winds should be considered as potential release-initiating events when conducting a PHA, and the RMP guidance further expands on this point.[58] Furthermore, the hazard evaluation amplifications reflect existing industry practice, and therefore, EPA assumes that these hazard evaluation amplifications impose no new requirements or costs on facilities that are in compliance with the RMP rule and common industry practice. By amplifying and making more explicit the need to evaluate natural hazards as potential causes of releases, EPA expects those facilities that are currently not performing such evaluations will better understand what the rule requires. Additionally, each modification of the RMP rule that EPA proposed and is finalizing is based on EPA's rulemaking authority under CAA section 112(r)(7). EPA has outlined its authority for all the changes to the regulation in section III.C of this preamble.

In response to comments that the determination of whether to implement additional layers of protection from natural hazards should be left to the facility and not subject to regulatory scrutiny, EPA notes that it is not requiring implementation of protective measures. At this time, EPA is simply emphasizing the already-existing requirement that the evaluation of natural hazards be explicitly included in hazard reviews and PHAs for Program 2 and Program 3 RMP-regulated processes. The Agency expects stationary source management to make reasonable decisions based on the information collected through this provision, like other provisions in the PHA. EPA acknowledges that natural hazards and process operations vary throughout the United States, and implementation of protective measures will therefore also vary among RMP processes. However, because the RMP rule is performance-based, EPA believes that all regulated RMP facilities can ultimately be successful in addressing natural hazards for their locations within their risk management programs.

In response to the comment that the reference to external events should be removed because it is vague and overly broad, EPA acknowledges that analysis of external events may be broader than expected. EPA is therefore revising the regulatory language in the final rule to focus on natural hazards rather than external hazards. Additionally, EPA is including ''exacerbate'' as an influence of an accident from natural hazards in addition to ''cause'' to further clarify the regulatory language. As a few commenters discussed, and EPA agrees, in some cases natural hazards can be a contributing factor for accidental releases, making them more extreme or likely, rather than causing them independently. Finally, EPA is removing the description of climate change in the hazard evaluation regulatory language to eliminate redundancy, as EPA is defining natural hazard as taking into account climate change impacts.

[52] *https://hazards.fema.gov/nri/natural-hazards.*

[53] *https://www.fema.gov/sites/default/files/documents/fema_climate-essentials_072023.pdf.*

[54] CCPS, *CCPS Monograph: Assessment of and Planning For Natural Hazards* (American Institute of Chemical Engineers, 2019), https://www.aiche.org/sites/default/files/html/536181/NaturalDisaster-CCPSmonograph.html.

[55] *https://hazards.fema.gov/nri/natural-hazards.*

[56] *https://disgeoportal.egs.anl.gov/ClimRR/.*

[57] *https://resilience.climate.gov/.*

[58] 87 FR 53567, August 31, 2022.

Alternative Approaches for Specifying Areas Most at Risk and Identifying Sources With Heightened Risk of Climate Events or Earthquakes

i. Comments

Several commenters expressed support for EPA specifying areas most at risk from climate or other natural events. One of the commenters indicated that adopting the list of areas exposed to heightened risk of wildfire, flooding, storm surge, or coastal flooding is necessary because facilities would face difficulties in assessing future climate risks without this additional guidance from EPA. A couple of commenters recommended that EPA use the list in the U.S. Government Accountability Office's 2022 report, ''Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change.'' [59] One of the commenters also recommended using the list in the 2021 report, ''Preventing Double Disasters,'' from David Flores et al.[60] A couple of commenters suggested that the list of at-risk facilities or geographic areas should be regularly updated using the latest available data. A couple of commenters clarified that such a list of at-risk areas should not be used to limit the number of facilities that are required to conduct a natural hazard or climate change hazard analysis.

A couple of commenters expressed opposition to the development of a list of geographic areas most at risk from natural hazards or climate-related hazards. One of the commenters indicated that such a list is not necessary because facilities in these areas are generally aware of the potential for those hazards. The commenter stated that EPA has not demonstrated sufficient need to apply geographic distinctions as a part of the regulatory approach. One commenter stated that according to the Intergovernmental Panel on Climate Change's reporting, there are challenges with attributing events to climate change; therefore, the commenter stated that they oppose EPA specifying geographic areas most at risk from climate impacts.

One commenter expressed support for EPA requiring sources in areas exposed to heightened risk of natural disasters to conduct hazard evaluations associated with climate or earthquakes as a minimum, while also requiring all sources to consider the potential for natural hazards unrelated to climate or earthquakes in their specific locations. Similarly, another commenter urged that it is EPA's responsibility to regulate chemical facilities appropriately. The commenter noted that the co-location of multiple polluting sites in climate vulnerable areas is common, with roughly a third of the nation's RMP facilities at increased risk from climate impacts; however, despite known risks, RMP facilities are not currently required to plan for scenarios such as inland flooding, coastal flooding, storm surge, and wildfires.

Conversely, one commenter stated that EPA does not need to apply different regulatory requirements based on geography, since EPA has not demonstrated sufficient need to apply such geographic distinctions as part of any regulatory approach. Instead, the commenter stated that a general provision to require hazard reviews and PHAs to evaluate the potential for natural hazards, such as (but not necessarily limited to) specific examples, would be more practical.

ii. EPA Response

While EPA agrees it could be useful to specify areas most at risk from natural events and identify sources with heightened risk of climate events, EPA is not finalizing a regulatory provision that will adopt these approaches at this time. Rather, EPA will use these comments, as well as those received on guidance development, to update the current hazard evaluation guidance and initiate ways to share natural hazard resources with facility owners and operators to help them identify and evaluate potential natural hazard risks. EPA expects to develop and release this guidance approximately one year after this final rule. The 2022 SCCAP proposed rule identified relevant new studies for RMP facilities and the threat of natural hazards to them. Those studies included the Center for Progressive Reform, Earthjustice, and the Union of Concerned Scientists' report ''Preventing Double Disasters'' [61] and the Government Accountability Office's report ''Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change.'' [62] EPA also believes CCPS' guidance presented in the 2022 SCCAP proposed rule, is still useful for facilities' evaluation of natural hazards for process safety. Lastly, EPA now also recognizes the identification of hazards in FEMA's NRI [63] and Climate Essentials for Emergency Managers [64] as the most comprehensive foundation to identify, evaluate and understand relative natural hazard risk, particularly how natural hazards must account for a changing climate. EPA intends to incorporate and further evaluate other resources as a minimum in its guidance and expects that information available in these resources can be helpful to be consulted to complement a facility's more localized information available from the State and local government.

b. Power Loss

EPA's Proposed Approach

i. Comments

One commenter agreed with EPA's approach to add regulatory text to emphasize that loss of power is among the hazards that must be addressed within hazard review. A few commenters expressed support for facilities having contingency plans to handle potential power loss. A few commenters noted that power loss has been identified as the cause of hazardous chemical releases, such as the Shell East Site and Arkema incidents, and stated it is clear that more stringent requirements are needed. One commenter stated that they did not oppose requiring hazard reviews and PHAs to address power loss, but noted that in many cases, a company's RMP already considers both natural hazards and power loss. One commenter stated that facilities should provide information to local responders about their backup power capabilities during a hazard event, including the backup generation source, fuel type, capacity (operational hours), and process consequences for extended power loss. The commenter stated that the information provided should address how long a facility can maintain the RMP process(es) safely with backup power. Several commenters urged EPA to require facilities to have backup power systems. A few commenters noted that EPA should require facilities to have enough backup power to safely run or shut down the entire facility in the event of power loss.

Several commenters noted that EPA has not provided data showing that power loss is a significant cause of accidents, and therefore the proposed

[59] *https://www.gao.gov/assets/gao-22-104494.pdf.*

[60] *https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf.*

[61] David Flores, et al., Preventing ''Double Disasters'' (2021), *https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf.*

[62] U.S. Government Accountability Office, Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change (2022), *https://www.gao.gov/assets/gao-22-104494.pdf.*

[63] *https://hazards.fema.gov/nri/.*

[64] *https://www.fema.gov/sites/default/files/documents/fema_climate-essentials_072023.pdf.*

rule is unwarranted. A few commenters stated that from 2016–2020, only 7 out of 448 reported accidents were linked to power loss. A few commenters stated that EPA did not adequately consider the costs and benefits of the proposed power loss provisions.

A couple commenters noted that EPA's proposal to explicitly require evaluation of standby and emergency power systems diverges with OSHA's PSM requirements in the PHA. The commenter stated that this proposal would inappropriately create an inconsistency between the two regulatory programs, injecting ambiguity and uncertainty into the PHA process. Another commenter urged EPA to not include these additional provisions in RMP regulations and instead allow OSHA to continue its oversight of these hazards.

One commenter strongly supported requiring air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP-regulated facilities to have standby or backup power. The commenter claimed, however, that the proposed amendments to 40 CFR 68.50 and 68.67 are extremely vague regarding this requirement.

Another commenter noted that, while fenceline monitors could detect an accidental release in some circumstances, high wind events such as hurricanes can render them useless such that a loss of power to monitors would have no adverse effect on the source or the surrounding community. A couple of commenters stated that a focus on maintaining air pollution control or monitoring equipment during a power loss, while important, may detract from the fundamental purpose of the RMP.

One commenter requested that the final rule require all facilities to have real-time fenceline air monitors with enforcement mechanisms and robust penalties for intentionally removing air monitors from service. The commenter stated that there are currently no penalties for facilities that shut down their monitoring during an incident. The commenter requested that EPA strengthen the proposed rule to require expanded fenceline monitoring and adequate backup power for air monitors to operate continuously and that this be documented in a written plan that includes the location of the monitors. Conversely, a couple of commenters claimed that EPA made an unjustified assumption in the preamble of the proposed rule that facilities will remove air monitoring and control equipment from service prior to a natural disaster to evade monitoring requirements. The commenters stated that the suggestion that facilities attempt to evade regulatory agency requirements in the event of a natural disaster is improper and inappropriate.

A few commenters stated that EPA's proposal to explicitly require backup and emergency power systems exceeds the scope of RMP without proper justification. One commenter expressed concern that the proposed backup power requirements exceed EPA's statutory authority and lack a reasoned basis. A couple of commenters also questioned whether EPA's statutory authority allows it to require such actions. The commenters contended that air emission monitoring equipment is typically regulated under other EPA CAA regulatory programs (New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and Title V permitting program).

ii. EPA Responses

EPA agrees that power loss can threaten RMP-regulated processes and cause accidental releases if not properly managed, and therefore disagrees that the provisions are unwarranted. In the proposed rule, EPA provided data showing that power loss has resulted in serious accidental release incidents at RMP-regulated facilities (87 FR 53569), and EPA believes making more explicit this already-existing accident prevention program requirement to evaluate hazards of the process[65] will ensure that threats of power loss are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities. Therefore, EPA is finalizing the proposed revisions.

In response to the comment that facilities should provide local responders with their backup power capabilities during a hazard event, EPA maintains that it is very important to ensure that Local Emergency Planning Committees (LEPCs) or local emergency response officials have the information necessary for developing local emergency response plans; however, EPA believes it is not necessary to specify in the RMP rule the types or format of information that LEPCs or emergency response officials may request. Section 303(d)(3) of the Emergency Planning and Community Right to Know Act already provides the necessary authority to allow LEPCs to request information needed to develop the local emergency response plan. Furthermore, as part of the annual coordination between facilities and local emergency responders, responders may obtain information on backup power as appropriate.

In response to the comments requesting that EPA require facilities to have enough backup power to safely run in the event of power loss, EPA is not requiring implementation of standby or emergency power for the entirety of an RMP process at this time. However, the Agency is requiring the source to consider the appropriateness of backup power for their process and to explain decisions not to implement backup power. There may be situations where backup power is not critical to chemical release prevention, so the rule provides sources the opportunity to explain their decision-making. Such an approach is consistent with the performance-based structure of the rule that relies on examination of process safety issues by the source, rational decision-making on the part of owners and operators, and oversight by implementing agencies through compliance assistance and enforcement and the public through disclosure. EPA takes a slightly different approach with respect to backup power for monitors. EPA is requiring standby or backup power for air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP-regulated processes and has amended regulatory language to reflect the requirement. EPA believes that doing so will help ensure compliance with the intent of the rule and ensure that the RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances can be measured during and following a natural disaster. While the Agency acknowledges that there may be processes that do not require backup power, the Agency believes that once a facility has made and documented the determination that it is appropriate to have monitors for accidental releases, then ensuring their operation through requiring backup power is an appropriate operational requirement.

In response to comments that the requirements would create inconsistency between EPA and OSHA regulatory programs, EPA seeks only to better reflect its longstanding regulatory requirement that loss of power is among the hazards that must be addressed within hazard evaluations, rather than impose additional regulatory requirements (and thus potential additional costs) that conflict with the OSHA PSM regulatory requirements.

[65] Existing requirements of the hazards to be evaluated in hazard evaluations are found at 40 CFR 68.50(a) for Program 2 processes and at 40 CFR 68.67(a) through (c) for Program 3 processes.

In response to the comment that the amendments to 40 CFR 68.50 and 68.67 are vague, EPA again notes these amplifications are already preexisting requirements. Also, EPA's general approach in 40 CFR part 68 has been to recognize that process safety requires owners and operators to exercise reasonable judgement in making their facility safer. Therefore, EPA has, and continues to, allow substantial flexibility for sources on how to comply with the RMP rule. As noted in the proposal, EPA believes many facilities are already managing the hazard of power loss well and thus does not believe the amplification of power loss in the hazard evaluation regulatory text will negatively affect evaluation of this hazard.

In response to comments regarding facilities' removal of air monitoring equipment,[66] EPA notes that the final rule is revising 40 CFR 68.52(b)(9) and 68.69(a)(4) to require documentation of the removal of monitoring equipment for accidental releases during disasters in facility operating procedures. In doing so, the Agency addresses the concern that the threat of extreme weather events has, and will continue to be, used by some owners or operators to justify disabling equipment designed to monitor and detect chemical releases of RMP-regulated substances at their facility (87 FR 53571). To prevent accidental releases, RMP owners or operators are required to develop a program that includes monitoring for such releases. EPA does not believe all natural disasters should be treated as an exception to this requirement. However, EPA understands that, in some situations, such as hurricane winds, there is a potential for damage to, or by, monitoring equipment if not secured and allows a source to shut down monitoring equipment in such cases provided that an explanation is included in its RMP.

EPA disagrees that the backup and emergency power system requirements exceed the scope of the RMP rule and EPA's statutory authority and also disagrees that the monitoring requirements may detract from the fundamental purpose of the RMP rule. Each modification of the RMP rule that EPA proposed and is finalizing is based on EPA's rulemaking authority under CAA section 112(r)(7). Both paragraph (A) and subparagraph (B)(i) of section 112(r)(7) explicitly grant EPA the authority to require monitoring for accidental releases. See CAA section 112(r)(7)(A)) (EPA ''authorized to promulgate release prevention, detection, and correction requirements which may include monitoring''); CAA section 112(r)(7)(B)(I) (as appropriate, the accidental release regulations shall cover the use, operation, and upkeep of equipment to monitor accidental releases). The original rule established, through its statutory authority, the requirement to monitor for accidental releases to help prevent and mitigate releases. Therefore, backup and emergency power system requirements being finalized in this rule simply ensure proper operation of monitors and continuous compliance with the existing requirement.

In response to comments that EPA did not adequately consider the costs and benefits of the power loss provisions, EPA notes that it is not finalizing additional regulatory requirements from what already exists in the RMP regulations. The current RMP rule's PHA requirements include determining and evaluating ''the hazards of the process'' as well as ''engineering . . . controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies.'' (40 CFR 68.67(c)(1) and (3)) Loss of power is one such hazard, and backup power is an engineering control applicable to the hazard and detection methodologies. Similar but less detailed requirements apply to Program 2 processes (40 CFR 68.50(a)). The hazard evaluation requirements reflect not only the OSHA and EPA rules but also existing industry recommended practices, and therefore, EPA assumes that these hazard evaluation amplifications impose no new requirements or costs on facilities. As EPA has discussed in prior RMP rulemaking RIAs, it is not possible to estimate quantitative benefits for proposed rule provisions as EPA has no data to project the specific contribution of each to an accident's impacts. As shown by accident trends, accident frequency and severity are difficult to predict. However, the 2022 SCCAP proposed rule and the accompanying Technical Background Document show that past accidents have been caused by power failure, and the backup power provisions target these events. Based on RMP-reportable accident and other data from RMP regulated industry sectors,[67] chemical accidents can impose substantial costs on firms, employees, emergency responders, the community, and the broader economy. Reducing the risk of such accidents, the severity of the impacts when accidents occur, and improving information availability, as the provisions of this final rule intend, will provide benefits to the potentially affected members of society.

c. Stationary Source Siting

EPA's Proposed Approach

i. Comments

A few commenters expressed support for EPA's proposal to amend regulatory text for Program 2 and 3 processes to define stationary source siting evaluations as including placement of processes, equipment, buildings, and hazards posed by proximate facilities and accident release consequences posed by proximity to the public. One commenter stated that doing so would ensure the protection of human health and the environment. Another commenter stated that EPA should require implementation of stationary source siting recommendations found in the analysis to the greatest extent practicable to assure protection for fenceline communities. Similarly, another commenter suggested that if it is practicable for a facility to take an action to eliminate or lessen hazards associated with RMP processes through different siting, it should be required to do so.

Several commenters expressed concerns about the proposed requirements related to siting evaluations. Several commenters noted that implementing the facility siting requirements are unnecessary and duplicative because facilities covered by OSHA's PSM regulations already undergo similar requirements. The commenters stated that this creates the opportunity for inconsistent enforcement between EPA and OSHA.

Several commenters expressed concern that EPA did not define the term ''proximate facilities.'' Many commenters were also concerned that when these facilities are identified, it is not practical to expect them to share information with each other due to confidential business information (CBI) and security concerns. One of the commenters suggested that EPA update the regulatory text to make an allowance for instances where neighboring facilities do not cooperate in the siting evaluation.

[66] The backup power requirement of this rule only addresses monitors for accidental releases of regulated substances under 40 CFR 68.130. This rule does not create any obligation to provide backup power to monitors that may be required by other CAA programs.

[67] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

A couple of commenters stated that it is impracticable for EPA to require existing facilities to move processes to comply with any new siting requirements. The commenters suggested that EPA clarify that these requirements do not apply to existing facilities. One commenter stated that imposing new siting requirements after a facility that has been established would raise fundamental fairness issues, as well as possible regulatory ''takings'' issues, potentially requiring compensation to the affected sources. One commenter noted that conducting a siting analysis is a significant undertaking for existing sources who do not have potential to cause offsite consequences. The commenter stated that it would be a costly and arduous undertaking to determine exactly what facilities are proximate and understand their internal operations.

One of the commenters noted that the proposed requirements should be narrowly interpreted to preserve local zoning authority. Another commenter mentioned that neither the facility nor EPA have any authority or control over local zoning ordinances that may have allowed development within an area that EPA's new criteria may deem to have inappropriate buffers or setbacks. Another commenter stated that the facility siting provision could negatively affect where facilities could be built, depending on the distance between a facility process and offsite populations. The commenter encouraged EPA to consider a policy restricting outside populations from building close to a facility which could interfere with real estate plans and impact local building regulations.

ii. EPA Responses

EPA agrees that amending the regulatory text to make more explicit the requirement that process hazard evaluations for both Program 2 (hazard review) and Program 3 (PHA) include in the siting evaluation the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accident release consequences posed by proximity to the public, will help ensure the protection of human health and the environment. As discussed in the proposal, siting of processes and equipment within a stationary source can impact the surrounding community, not only through the proximity of the accidental release to offsite receptors adjacent to the facility boundary (*e.g.,* people, infrastructure, environmental resources), but also through increasing the likelihood of a secondary ''knock-on'' release by compromising nearby processes. The proposal offered several examples of accidental releases which illustrate the significant effects of the lack of sufficient distance between the source boundary and neighboring residential areas.

In response to comments that EPA should require implementation of stationary source recommendations, EPA notes that, at this time, the Agency is only choosing to make more explicit what is required to be addressed in a stationary source siting evaluation. Rather than propose additional requirements, EPA is instead expounding on the current regulatory text to ensure that siting evaluations properly account for hazards resulting from the location of processes, equipment, building, and proximate facilities, and their effects on the surrounding community. EPA continues to believe the performance-based nature of both this provision and the overall rule allow facility owners and operators the discretion to determine what risk reduction measures work best for their particular chemical use, process, or facility. Furthermore, EPA disagrees with comments that implementing the facility siting requirements would create the opportunity for inconsistent enforcement between EPA and OSHA. The OSHA PSM standard and RMP rule both require that facility siting be addressed as one element of a PHA (29 CFR 1910.119(e)(3)(v) and 40 CFR 68.67(c)(5)). In response to comments on the proposed PSM rule, OSHA indicated that facility siting should always be considered during PHAs and therefore decided to emphasize this element by specifically listing siting evaluation in regulatory text.[68] EPA's approach to the siting requirement is consistent with its general approach to PSM in the 1996 RMP rule: sound, comprehensive PSM systems can protect workers, the public, and the environment.[69]

In response to the comments regarding the definition of ''proximate facilities'' and CBI, EPA notes that the provision is for facility owners and operators to be aware of and consider the apparent presence of facilities within release impact zones that could occur from their facility, and how those releases would be affected because of the presence of nearby facilities. While EPA encourages sharing of chemical and process information between facilities, particularly for emergency response purposes, EPA does not believe this is required in order to comply with the provision. Nevertheless, when conducting siting evaluations, EPA would reasonably expect sources to consult publicly accessible information on nearby sources, such as RMPs and information available through LEPCs. This type of information is not CBI.

EPA disagrees that it is impracticable to require existing facilities to comply with siting requirements. EPA notes that there is a breadth of guidance on siting, and the Agency therefore believes there is adequate information available for facilities to comply with the text in this final rule. EPA expects facilities to continue to use available resources and any additional industry-specific guidance to properly evaluate siting hazards. The rule does not mandate that existing sources modify their footprint as a result of a siting analysis. The approach taken in this rule is similar to how hazard evaluations have proceeded in the past: require the analysis of hazards and rely upon owners and operators to use the information reasonably when determining what measures should be undertaken. The Agency also notes that Program 1 processes are not covered by this requirement; Program 2 and 3 sources subject to this requirement will have undertaken offsite consequence analyses and determined that they may have offsite impacts that disqualify them from Program 1. Finally, while EPA has in the past discussed the potential for requiring minimal setbacks and other specific location restrictions, notwithstanding local zoning, the siting requirement in this rule does not contain such a restrictions on location.

d. Hazard Evaluation Information Availability

EPA's Proposed Approach

i. Comments

Several commenters expressed support for EPA's proposed hazard evaluation information availability requirements. One commenter stated that failing to finalize the proposal would be arbitrary and capricious because owners and operators can continue to ignore recommendations from hazard evaluations with no justification, even if the recommendations are feasible and effective. One commenter strongly supported EPA's decision to require RMP facilities to report declined recommendations in hazard evaluations but also suggested there should be a baseline checklist of natural hazard mitigation measures. A couple of the commenters noted that facilities should

[68] OSHA, *Final Rule on Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents,* 29 CFR part 1910 (1992), 57 FR 6356 (February 24, 1991), *https://www.osha.gov/laws-regs/federalregister/1992-02-24.*

[69] 61 FR 31687, June 20, 1996.

be required to implement practicable recommendations.

Several commenters expressed concern that there is no reasonable explanation for requiring the reporting of rejected recommendations. A few commenters mentioned that the proposed requirements are unnecessary because this information is already documented as part of the PHA or Layers of Protection Analysis (LOPA) and adding it to the RMP only produces double documentation without added benefit. Some commenters mentioned that EPA did not consider the labor costs and time that would be devoted to preparing a written justification for rejected recommendations. One of the commenters stated that the time and resources could be better spent on implementing accepted recommendations. A few commenters suggested that there is no evidence that requiring individual facilities to provide such documentation will reduce accident rates and may lead some to believe that it is possible to eliminate all risks, including potential risks, which could lead to a release.

Some commenters noted that the requirement will likely cause facilities to consider a narrower scope of recommendations to avoid making this exercise more burdensome. Similarly, one commenter expressed concern that the proposed requirement will discourage facility leaders from pushing their PHA/LOPA teams from identifying unmitigated hazards to limit the amount of information they are required to report to EPA. Another commenter recommended that EPA make clear that an appropriately justified denial during initial review of a facility's RMP plan should not have to be re-justified in subsequent reviews of the plan.

ii. EPA Responses

EPA believes that finalizing the hazard evaluation recommendation information availability provisions will enable the public to ensure facilities have conducted appropriate evaluations to address potential hazards that can affect communities near the fenceline of facilities. At this time, EPA is not requiring facilities to implement practicable recommendations from natural hazard, power loss, and siting hazard evaluations, as long as facilities list in their risk management plans the recommendations that were not implemented and the justification for those decisions. EPA disagrees that the requirements are unnecessary and provide no benefits. EPA believes the requirements are important to help the public understand how facilities address the hazards that may affect their community to keep the risk at or below an ''acceptable level,'' which include adherence to RAGAGEP, and the reasonable judgments and efforts of compliance programs aimed at preventing or mitigating accidental releases. In response to comments that requiring such documentation will not reduce accident rates, EPA believes that when local citizens have adequate information and knowledge about the risks associated with facility hazards, facility owners and operators may be motivated to further improve their safety performance in response to community oversight. At a minimum, better community understanding of identified hazards and remedies not implemented will promote better community emergency planning.

In response to comments that EPA did not consider the costs of preparing written justifications for rejected recommendations, EPA notes that the RIA for the final rule estimates anticipated costs for preparing written justifications.

In response to the comments that the requirement will discourage facilities from considering recommendations and identifying unmitigated hazards, EPA notes that the hazard evaluation requirements for Program 2 (40 CFR 68.50) and Program 3 (40 CFR 68.67) processes remain unchanged—to identify, evaluate, and control hazards involved in the process, assuring the recommendations are resolved in a timely manner. When facilities fail to conduct these activities, they will not be in compliance with the hazard evaluation provisions. EPA believes the flexibility permitted in hazards evaluations, that is, allowing facility owners and operators to choose which recommendations will be implemented, is the best approach for exercising reasonable judgement to determine what risk reduction measures work best for their particular chemical use, process, or facility. However, EPA views choosing to leave hazards unaddressed out of fear of public scrutiny as not exercising reasonable judgement, particularly when it may leave the process more vulnerable to accidental releases.

Methods To Provide Justification

i. Comments

A few commenters expressed support for using categories, such as those in OSHA's 1994 Compliance Directive,[70] for declining to adopt a PHA recommendation. One of the commenters noted that requiring owners and operators to choose one of four pre-selected categories makes it easier for owners and operators to understand and comply with their duties. The commenter suggested that EPA should not include alternative categories or a catch-all ''other'' category because doing so would dilute the purpose of the amendment by allowing facilities to decline recommendations for potentially insufficient reasons. Another commenter expressed concern that the list of possible natural hazards, loss of power, and siting evaluation recommendations that might not be adopted could be expansive; therefore, the commenter suggests EPA should provide specific categories of recommendations for facilities to choose from when reporting.

One commenter recommended that the information be presented in a public and easily accessible space across many different sites and locations. Similarly, another commenter suggested that owners of RMP facilities should be obligated to post hazard-related information online and provide a link in risk management plans so responders and local communities can access this information.

A commenter recommended that EPA require owners and operators to include not only documentation that one of the four justifications is met, but also a narrative explaining how the documentation shows that the justification has been met. Conversely, another commenter noted that requiring covered facilities to provide declined hazard evaluation recommendations in narrative form is an unnecessary intrusion into internal practices at a facility that does not improve that facility's safety.

One commenter noted that the proposed requirement for selection of ''preselected categories'' does not appear in the proposed regulatory text and recommended that if EPA intends to make the use of these categories mandatory, it must put them into the regulatory text. The commenter also noted that these categories are good conclusions for internal facility evaluations that assess complex considerations, but they provide little to no useful information to LEPCs and local communities.

ii. EPA Responses

EPA agrees that requiring owners and operators to choose one of four pre-selected categories makes it easier for owners and operators to understand and comply with their duties and is thus finalizing this component in the rule. EPA is not requiring narrative

[70] *https://www.osha.gov/sites/default/files/enforcement/directives/CPL02-02-045_CH-1_20150901.pdf.*

explanations to be reported as there is concern that such explanations may be greatly inconsistent as they would require large amounts of technically challenging and varying information to be comparably condensed. The Agency believes the four pre-selected categories ensures a balanced approach to providing beneficial data to the public as well as a straightforward method of reporting for facility owners/operators. While EPA is not adding the categories to the regulatory text, EPA will plan to revise its online RMP submission system, RMP*eSubmit,[71] to include the categories,[72] similar to the those in OSHA's 1994 Compliance Directive, which will mimic the approach for other data components required by 40 CFR 68.170 and 68.175. Sources will therefore be able to update their RMPs with the information once the additional data field is incorporated into the system, and in accordance with applicable compliance dates. EPA also plans to update the RMP*eSubmit User's Manual [73] to provide guidance for entering declined recommendations and applying these categories to them.

B. Safer Technology and Alternatives Analysis (STAA)

1. Summary of Proposed Rulemaking

a. Definitions, 40 CFR 68.3

EPA proposed to define ''inherently safer technology or design'' (IST/ISD) to mean risk management measures that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify covered processes in order to make accidental releases less likely, or the impacts of such releases less severe.

EPA also proposed definitions for ''passive,'' ''active,'' and ''procedural'' measures. EPA proposed to define ''passive measures'' as risk management measures that use design features that reduce either the frequency or consequence of the hazard without human, mechanical, or other energy input. EPA proposed to define ''active measures'' as risk management measures or engineering controls that rely on mechanical, or other energy input to detect and respond to process deviations. Lastly, EPA proposed a definition for ''procedural measures'' as risk management measures such as policies, operating procedures, training, administrative controls, and emergency response actions to prevent or minimize incidents.

Finally, EPA proposed to define ''practicability'' as the capability of being successfully accomplished within a reasonable time, accounting for technological, environmental, legal, social, and economic factors.

b. Process Hazard Analysis, 40 CFR 68.67

EPA proposed to modify the PHA provisions by adding an additional paragraph (c)(9) to 40 CFR 68.67 to require that the owner or operator of a facility with Program 3 processes in NAICS codes 324 and 325 located within 1 mile of another 324 and 325 regulated facility process address safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards. EPA proposed that ''1 mile'' be interpreted to mean ''1 mile to the nearest fenceline'' for a facility with a NAICS 324 or 325 process. EPA proposed to add paragraph (c)(9)(i) to specify that the analysis include, in the following order, IST or ISD, passive measures, active measures, and procedural measures. EPA also proposed that all facilities with 324 processes using hydrofluoric acid (HF) in an alkylation unit conduct an STAA for the use of safer alternatives compared to HF alkylation, regardless of proximity to another NAICS 324- or 325-regulated facility process.

EPA proposed to require owners and operators subject to the STAA provision to include an evaluation, including the results of the STAA analysis, as part of the PHA requirements in 40 CFR 68.67(e). In addition, EPA proposed to add paragraph (c)(9)(ii) to require that the owner or operator determine and document the practicability of the IST or ISD considered. This process would be separate and additional to the PHA requirements in 40 CFR 68.67(e). As part of this analysis, owners and operators would be required to identify, evaluate, and document the practicability of implementing inherent safety measures, including documenting the practicability of publicly available safer alternatives. Lastly, EPA proposed to add paragraph (c)(9)(iii) to require that a facility's STAA team include, and document the inclusion of, one member who works in the process and has expertise in the process being evaluated.

In addition to the proposed approach to STAA, EPA sought feedback on the industry understanding of the practicability assessment, and how this might differ from the findings identified in the PHA, as well as the additional benefit of such a provision. EPA solicited comment on whether the Agency should only require the STAA as part of the PHA, without the additional practicability assessment. EPA also sought comment on other alternative approaches considered. One approach was applying STAA requirements to facility processes in NAICS codes 324 and 325 with a reportable accident within the last 5 years. Another approach was applying these provisions to all NAICS codes 324 and 325 facility processes. Lastly, EPA sought comment on whether the Agency should require implementation of technically practicable IST/ISD and STAAs.

c. STAA Technology Transfer, 40 CFR 68.175(e)(7)

EPA proposed to add 40 CFR 68.175(e)(7) to require owners or operators to report whether their current PHA addresses the STAA requirement proposed in 40 CFR 68.67(c)(9), whether any IST/ISD was implemented as a result of 40 CFR 68.67(c)(9)(ii), and if any IST/ISD was implemented, to identify the measure and technology category.

2. Summary of Final Rule

As discussed below, the final rule adopts three measures related to STAA: a broad requirement to conduct a STAA applicable to two sectors, petroleum refining (NAICS 324) and chemical manufacturing (NAICS 325); a requirement to conduct a practicability assessment for IST/ISD for a subset of facilities with processes in these sectors (co-located sources within 1 mile, refinery HF alkylation processes, and those that have had a reportable accident within the 5 preceding years); and a requirement for the same subset of facilities to implement at least one practicable passive measure or similarly protective active or procedural measure(s) after each STAA. These measures also are severable from each other. Even without a mandate to implement any measures resulting from an STAA or to conduct a formal, documented practicability assessment, an owner or operator of a facility may identify and decide to implement new prevention measures resulting from the STAA. Similarly, even without a requirement to implement practicable IST/ISD measures or conduct a broader STAA review, a practicability assessment may lead to the adoption of an IST or ISD at the subset of sources required to conduct such an assessment. Finally, the requirement for a subset of sources to implement a passive measure or an equally protective active

[71] *https://www.epa.gov/rmp/rmpesubmit.*

[72] These changes will be made to the submission system prior to the 4-year compliance date as described further in section IX.C.8. of this preamble.

[73] *https://www.epa.gov/rmp/rmpesubmit-users-manual.*

measure(s) or procedural control(s) does not depend on whether an IST/ISD practicability assessment was performed or whether the broader industry is performing a STAA. While each of these measures relate to STAA generally, they are distinct regulatory requirements of value independent of each other.

The Agency acknowledges that, prior to this final rule, EPA has not made implementation of any IST/ISD or any measure identified in a STAA either a preferred option at proposal or an adopted requirement in a final rule. Our prior rulemakings have discussed our policy view of the merits of requiring implementation. Our prior decisions have not questioned what we view to be clear on the face of the statute: that the CAA authorizes EPA to require implementation of IST/ISD and other STAA measures. As discussed below (section V.B.3—Hydrogen fluoride), both subparagraphs (A) and (B) of CAA section 112(r)(7) authorize requiring implementation of safer technologies, and as discussed in the ''safeguard implementation'' section, EPA has appropriately justified our change in our view of the policy merits of the requirement promulgated in this final rule. The 2017 amendments rule, the 2019 reconsideration rule, and the 2022 SCCAP proposed rule all had vigorous discussion of the merits of implementing STAA throughout the rulemaking process, and the 2022 SCCAP proposed rule solicited comment on whether implementation should be required. Therefore, sources were on notice that the decision was an open matter and any reliance that we would not adopt an implementation requirement in response to comments and data was not reasonable. Moreover, to the extent sources relied on our preferred option regarding implementation at proposal, EPA believes the compliance period is adequate to allows sources to meet the rule requirements.

Based on comments on both the proposed options and the alternative approaches presented, EPA is finalizing the proposed provisions for STAA with the following modifications:

- Revising 40 CFR 68.67(c)(9) to expand the STAA evaluation to all regulated facilities with Program 3 processes in NAICS codes 324 and 325.
- Revising 40 CFR 68.67(c)(9)(ii) to expand the IST/ISD practicability assessment to regulated facilities with Program 3 processes in NAICS codes 324 and 325 that also have had at least one RMP-reportable accident under 40 CFR 68.42 since the facility's most recent PHA.
- Adding 40 CFR 68.67(h) to require implementation of at least one passive measure at an applicable facility, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure.

3. Discussion of Comments and Basis for Final Rule Provisions

a. General STAA Provision Comments

STAA as Part of PHA

i. Comments

A couple of commenters stated that they support EPA's proposal that owners and operators of RMP-covered facilities be required to include consideration and documentation of the feasibility of applying safer technologies and alternatives in their PHAs. One of the commenters noted, however, that only doing STAAs within the PHA will limit the effectiveness of the evaluations, and therefore, STAA should be evaluated within the PHA process as well as outside of the PHA in a separate study to evaluate each existing process.

Some commenters expressed opposition to EPA requiring a mandatory STAA component in the PHA. A few commenters noted that mandating a full IST or ISD review would require a completely different PHA team, extensively increase the time and resources necessary to complete a PHA, require the PHA team to perform hazard assessments of ever-changing technology they may not be familiar with, and dilute a PHA's core purpose.

One commenter noted that the proposed rule's STAA requirements do not acknowledge the value of the PHA risk assessment function. Another commenter stated that the analysis of passive measures, active measures, and procedural measures already occurs as part of the PHA, as required by 40 CFR 68.67(c)(3) and (4) and (6) and (7), and no modification of the current regulations is thus required to ensure that this analysis occurs. The commenter added that STAA requirements will detract from and reduce the effectiveness of PHAs as it will divert resources from PHA processes that are currently working well at regulated facilities. The commenter noted the effectiveness of a PHA depends heavily upon the availability of high-quality process safety information (PSI), yet the proposed rule provides no direction on how the PHA team is to assemble the PSI needed to perform the STAA. The commenter explained that facilities would not normally have information about processes not in use there. The commenter added this detracts from the PHA focus on existing facility processes and potentially reduces the effectiveness of the analysis.

ii. EPA Responses

EPA believes that STAA analysis can be incorporated in the existing RMP PHAs by using PHA techniques such as the Hazard and Operability Study, What-If? Method, checklists, a combination of these, or other appropriate equivalent methodologies. (See 40 CFR 68.67(b)) These techniques themselves are not requirements, but tools available to help the facility owner or operator to identify, evaluate, and control the hazards involved in the process. The Agency also notes that, when EPA previously considered an IST requirement, commenters noted that ''PHA teams regularly suggest viable, effective (and inherently safer) alternatives for risk reduction,'' and EPA observed that ''good PHA techniques often reveal opportunities for continuous improvement of existing processes and operations'' (61 FR 31699–700).

Therefore, EPA agrees with commenters expressing support for including a STAA in the PHA and disagrees with commenters that argue it is not appropriate to include a STAA in the PHA. In fact, the RMP PHA requirements include other aspects of analysis that are typically associated with process design. For example, the PHA must also address stationary source siting issues, which involve the location and proximity of the source relative to local populations.

Nevertheless, EPA agrees that for situations where a STAA involves a novel process that is entirely different from the current process, the process design must exist or be developed within the industry, and PSI be compiled, to conduct a PHA for this new process. EPA does not expect facility owners or operators to research and create new processes or conduct research into all possibilities for the use of new chemicals. Instead, the STAA should focus on the industry known and existing substitute processes and chemicals that have been demonstrated to be safe in commercial use.

If a facility is considering an IST chemical substitution or process change from their STAA that involves a significant redesign of their process, such efforts involved with redesign and its evaluation may need to be undertaken as part of a practicability study. The definition of practicability allows for consideration of technological factors, which could include whether the potential safer

alternative can be designed and operated to meet the process functions needed. However, not all IST involves substituting a chemical or an entirely new process. Also, there are other types of IST measures (minimization, moderation, or simplification) that can be considered to address various points within the current process where hazards and risks exist.

Facilities may, if desired, conduct a separate STAA analysis of each entire process, outside of the PHA process, as long as it is done in the same timeframe as the PHA, and the results are documented. If a facility does not have staff capable to identify and evaluate alternatives, the facility owner or operator may obtain outside assistance from engineering firms or consultants. Furthermore, the Agency has accounted for the technical capabilities of facilities in the sectors targeted for STAA when determining reasonable requirements that provide for the prevention of accidents to the greatest extent practicable.

Due to the performance-based approach of the current RMP PHA requirements at 40 CFR 68.67(c)(3), to identify, evaluate, and control the hazards involved in the process, EPA believes some facilities may have already performed a STAA-type analysis as part of their PHA. If the facility has already performed such STAA analysis in the past, then the owner or operator should consider these analyses when updating or revalidating their PHAs and determine whether there is new information that should be considered as part of conducting the current STAA.

Costs and Benefits of Implementing STAA as Part of PHA

i. Comments

A couple of commenters stated that the STAA provisions would not be cost-effective. The commenters stated that the STAA represents 70 percent of the total costs EPA estimated apply to the proposed rule. The commenters noted that the proposed STAA requirement is solely for consideration of possible alternatives and has unproven and unquantified benefits that do not justify the annual cost of $51.8 million. One of the commenters added that EPA stated that they expect ''some portion of future damages would be prevented through implementation of a Final Rule,'' but they did not identify any benefits specifically tied to the STAA provision. The commenter stated that there is consensus on the theoretical value of STAA as a tool to inform future investment decisions and said that once a facility has committed to a particular production technology, STAA is not particularly useful nor informative. In contrast, another commenter stated that the costs of transitioning to safer alternatives are not sufficiently weighed against the costs of a major incident. The commenter provided an example that indicates that safety improvements could avoid major incidents costing owners $220 million on average. The commenter also noted that this figure does not include costs to society, such as human lives, economic stress, and health care and emergency service costs.

ii. EPA Responses

EPA disagrees that the benefits of the STAA requirements do not justify the costs. EPA believes that the STAA should identify potential IST process changes that, if implemented, would result in owners or operators using less hazardous substances, minimizing the amount of regulated substances present in a process, moderating process conditions and reducing process complexity. The STAA also should identify potential passive, active, or procedural safeguards that, when implemented, will result in changes to make processes safer. Such changes help reduce the prevalence of higher risk processes and thereby prevent accidents by either: (1) Eliminating the possibility of an accidental release entirely, by making a process more fault-tolerant, such that a minor process upset, or equipment malfunction does not result in a serious accidental release; and (2) reducing the severity of releases that do occur.

RMP accident data show past accidents have generated highly variable impacts, so the impacts of future accidents are difficult to predict. Nevertheless, it is clear from RMP accident data [74] and other data from RMP regulated industry sectors,[75] that chemical accidents can impose substantial costs on firms, employees, emergency responders, the community, and the broader economy. Because major and other concerning RMP accidents continue to occur, by lowering risk of accidents, the benefits include: reductions in the number of fatalities and injuries both onsite and offsite and residents evacuated or otherwise inconvenienced by sheltering in place; reductions in the damage caused to property onsite and offsite of the facility including damages to product, equipment, and buildings; reductions in damages to the environment and ecosystems; and reductions in resources diverted to extinguish fires and clean up affected areas. Preventing serious accidents avoids numerous direct costs, including worker, responder, and public fatalities and injuries, public evacuations, public sheltering in place, and property and environmental damage. It also avoids indirect costs, such as lost productivity due to lost or damaged property and business interruption both onsite and offsite, expenditure of emergency response resources and attendant transaction costs, and reduced offsite property values. Actions that prevent or reduce the severity of accidents in RMP-covered processes are also likely to prevent or mitigate non-RMP accidents at the same facilities because the same or similar actions can be taken for processes and equipment not subject to the regulation, often at minimal additional cost.

Further, for IST/ISD practicability and implementation of certain measures, EPA recognizes facilities will most likely implement IST/ISD when an IST/ISD's net cost is less than a passive measure's cost. The Agency assumes owners and operators will likely explore specific benefits to their facility when making decisions and expects the evaluation to consider several factors, such as:

- Operating and Maintenance (O&M) cost—IST/ISD may have a change in O&M costs compared to passive measures. For example, chemicals used in the process may change, which could cause changes in recurring input costs, including potentially lower those costs.
- Productivity improvements—IST/ISD could result in productivity improvements from more efficient process and changes to input costs.
- Safety improvements—IST/ISD may reduce risks of an accident more than would a passive-equivalent measure. A lower accident risk will result in facility safety benefits and social benefits from fewer accidents.
- Capital/facility reduced losses—Similar to safety, a lower accident risk will reduce losses to capital as well as shorter than expected facility shutdown time from accidents.

These facility specific factors will further help owners and operators justify identify facility-specific benefits associated with the costs to comply with this provision. EPA continues to believe the performance-based nature of both this provision and the overall rule allow facility owners and operators the

[74] EPA estimated monetized damages from RMP facility accidents of $540.23 million per year.

[75] Marsh JLT Specialty, ''100 Largest Losses in the Hydrocarbon Industry,'' 27th Edition, March 2022. Accessed from *https://www.marsh.com/uk/industries/energy-and-power/insights/100-largest-losses.html.* Marsh provides estimates of large property damage losses in the hydrocarbon industry from 1974 to 2021 in current and 2021 dollars and in a few cases, business loss costs.

discretion to determine which IST/ISDs and passive, active and procedural safeguard measures work best for their particular chemical use, process, or facility and for protecting the community potentially affected.

EPA disagrees that the benefits of the STAA requirements are unproven. Since 1996, EPA has seen that advances in ISTs and safer alternatives are becoming more widely available and are being adopted by some companies. Voluntary implementation of some ISTs has been identified through surveys and studies and potential opportunities have been identified through EPA enforcement cases and the U.S. Chemical Safety and Hazard Investigation Board (CSB) incident investigations. As discussed in the 2017 amendments rule (82 FR 4645, Jan. 13, 2017), the Contra Costa County Health Services and New Jersey Department of Environmental Protection (NJDEP) IST regulations have resulted in some facilities adopting IST measures.

EPA disagrees that STAA is not useful or informative for facilities that have committed to a particular production technology. Innovations and research in chemical process safety have evolved and continue to evolve. For those facilities who have not considered adopting any IST or have only done so in limited fashion, EPA believes that there is value in requiring facilities with regulated substances to evaluate whether they can improve risk management of current hazards through potential implementation of ISTs or risk management measures that are more robust and reliable than ones currently in use at the facility. For those facilities who have already considered IST, EPA believes facilities should re-evaluate whether any improvements in hazard or risk reduction can be made.

In response to the comment that EPA did not identify any benefits specifically tied to the STAA provision, EPA was able to qualitatively judge that the risk reduction from STAA implementation [76] reasonably justified the costs. In principle, the STAA eliminates or minimizes the opportunities for a chemical release because identification and implementation of ''safer'' technologies and alternatives, should result in a hazard or risk reduction for a particular RMP chemical or process. EPA recognizes that neither IST nor other procedural, active, or passive measures alone will eliminate all hazards or risks and that reliance on a combination of risk reduction measures will probably be needed for other points in a process.

Hydrogen Fluoride

i. Comments

Some commenters were concerned that the proposed rule leaves the continued use of HF up to owners/operators. A few commenters urged EPA to strengthen the proposed rule by requiring facilities to switch from HF or other acutely toxic substances to a safer alternative whenever feasible, since safer alternatives are available. One of the commenters noted the CSB's 2022 report recommendations that HF in remaining alkylation units in the U.S. be eliminated and replaced, if necessary, with less hazardous chemicals that are consistent with ISD. One commenter requested that safer alternatives to HF be implemented across all oil refineries in the U.S.

One commenter stated that the proposed rule was not comprehensive enough to adequately mitigate the inherent risks associated with using HF. The commenter stated that asking these facilities to merely consider switching from HF alkylation to safer alternatives and requiring them to include an STAA as part of their PHA was not enough to eliminate the inherent risk of having HF onsite. A couple of commenters recommended that the use of HF in refineries be banned. One of the commenters urged EPA to establish an aggressive timeline to phase out HF's use and said that further study is a waste of time. Another commenter contended that adding a larger scale ban of HF across all the oil refineries in the U.S. would safeguard millions of Americans from facing disaster in the event of an accidental release. Several commenters stated that the history of HF use and accidents supported the idea that stronger EPA action was necessary to protect communities.

Several commenters stated a range of concerns regarding the dangers of HF. A few of the commenters specifically noted near misses or releases of HF and their associated harms and costs. One commenter noted the dangers of HF and the risks to communities, workforces, wildlife, hospitals, and first responders. Another commenter noted the risk of a catastrophic event caused not only by accidents and human error, but also from terrorism and natural disasters, which the commenter claimed cannot be mitigated. One commenter noted that earthquakes could cause the release of HF from refineries. One commenter noted the prevalence of refineries using HF near urban centers. Another commenter noted their concerns regarding the hazards of HF, specifically the dangers for nearby school children and a lack of emergency preparedness in schools.

Conversely, one commenter urged EPA not to advance requirements specific to HF alkylation units. The commenter claimed that EPA has no legal authority to mandate STAA on existing processes and that the proposed STAA requirements on all HF alkylation processes at petroleum refineries are arbitrary and unlawful. The commenter claimed that EPA did not provide a meaningful account of the benefits associated with this requirement, failed to state specifically how this requirement would fulfill any statutory requirements of the RMP, and has little or no data to support its proposal. The commenter further claimed that the data indicates that the industry is safely managing the risks with HF.

One commenter claimed that data show that HF alkylation processes are well managed by refiners. The commenter noted EPA's 1993 report on HF [77] and the continuous improvement of industry-developed HF management policy American Petroleum Institute (API) Recommended Practice 751, ''Safe Operation of Hydrofluoric Acid Alkylation Units'' (RP 751).[78] The commenter stated that RP 751 is recognized by OSHA and the CSB as providing effective guidance for the safe operation of HF alkylation units and management of HF catalyst. The commenter claimed that there have never been life-threatening injuries to people in surrounding communities stemming from HF-related incidents at refineries, which the commenter noted was because of multiple layers of mitigation technologies and emergency procedures. The commenter claimed that the benefits of STAA are flawed because the commenter noted that EPA failed to consider the measures taken at facilities that follow or audit against RP 751.

ii. EPA Responses

EPA notes that HF is an extremely toxic chemical used for alkylation at 27 percent of facilities in NAICS 324 (45 of 163). EPA is requiring that all HF alkylation processes at petroleum refineries (NAICS 324) conduct an initial STAA evaluation, a practicability assessment for IST/ISD, and

[76] This is further discussed in greater detail in Chapter 6 of the RIA.

[77] EPA, *Hydrogen Fluoride Study, Report to Congress section 112(n)(6) Clean Air Act As Amended, https://nepis.epa.gov/Exe/ZyPDF.cgi/10003920.PDF?Dockey=10003920.PDF.*

[78] API, *Recommended Practice 751* (2021), *https://www.api.org/oil-and-natural-gas/healthand-safety/refinery-and-plant-safety/process-safety/process-safety-standards/rp-751.*

implementation of at least one passive measure (or combination of active or procedural measures equivalent to the risk reduction of a passive measure), primarily due to recent incidents where HF was nearly released when there were explosions, fires, and other releases that could have triggered releases of HF. While API RP 751 offers industry guidance to help safely manage HF alkylation process and its hazards, those process hazards still exist. In contrast, there are recognized potentially safer chemical alternatives available for HF alkylation that have been successfully implemented by refineries, such as sulfuric acid alkylation, ionic liquid alkylation, or solid acid catalyst alkylation. These eliminate the hazard. With several known alternatives and with recent incident history, EPA believes the process of HF alkylation merits a rule-based prevention approach rather than only selective oversight. In response to the comments urging EPA to require facilities to switch from HF to a safer alternative whenever feasible, the practicability of these potentially safer alternatives is situation-specific, and owners and operators are usually in the best position to make these determinations.

EPA summarized its legal authority for the various provisions of this final rule in the preamble to the proposed rule, specifically identifying STAA as a prevention measure authorized under CAA section 112(r)(7) (87 FR 53563–64, Aug. 31, 2022). EPA's legal authority to require an STAA evaluation and implementation of reasonable STAA measures is well-established under both paragraphs (A) and (B) of CAA section 112(r)(7). In authorizing rules for the prevention of accidental releases of regulated substances, subparagraph (A) of section 112(r)(7) specifically allows for rules that address design, equipment, and operations while permitting EPA to distinguish among classes of facilities based on factors ''including, but not limited to . . . location [and] process.'' This language authorizes EPA to put restrictions on and impose requirements for permissible design of a process and the types of equipment used as well as continuing operation of such designs and technologies. With respect to HF alkylation processes, not only does the statute authorize consideration of location when identifying classes to regulate, it also provides that EPA may consider the ''potency of substances'' when making distinctions among facilities that are covered by regulations under section 112(r)(7)(A). As discussed in the proposed rule, HF is a particularly potent regulated substance. 87 FR 53576 (Aug. 31, 2022).

In addition to the authority granted by subparagraph (A), the authority in subparagraph (B) to develop ''reasonable regulations [that] provide, to the greatest extent practicable, for the prevention and detection of accidental releases'' authorizes reasonable regulations to mandate examination of potential methods to prevent releases, to examine the practicability of alternative designs and technologies, and to require adoption of release prevention measures when practicable. Many of the same terms appear in both subparagraph (B)(i) as in subparagraph (A)—the requirement to cover ongoing operations, the authority to recognize ''differences in . . . operations, processes and class . . . of sources,'' while also granting authority to regulate ''use'' of regulated substances. Subparagraph (7)(B)(ii) authorizes rules to ''minimize'' accidental releases, which encompasses a mandate to implement practicable passive mitigation measures or their equivalent active and procedural measures. STAA is a ''safety precaution'' under the prevention program. CAA 112(r)(7)(B)(ii)(II).

As noted in the 2017 amendments rule (82 FR 4630, Jan 13, 2017), both the Conference Report for the 1990 CAAA [79] and the 1989 Senate Report related to the CAAA [80] provide substantial support for the concepts of STAA. The Conference Report included support for ''a review of the efficacy of various prevention and control measures, including process changes or substitution of materials'' (Conference Report pp. 340–41). Further, the Senate Report supported ''release prevention measures'' that contemplate IST and STAA (Senate Report p. 242). While neither the 1996 RMP rule nor the 2019 reconsideration rule required IST or STAA, neither action based those decisions on a lack of authority under CAA section 112(r)(7) to require examination of safer alternatives at either existing or new processes.

Furthermore, in discussing the purpose of the chemical accident provisions, the Senate Report identified a preference for measures that promote safer technologies to those that merely mitigate or respond to releases (pp. 208–209):

Systems and measures which are effective in preventing accidents are preferable to those which are intended to minimize the consequences of a release. Measures which entirely eliminate the presence of potential hazards (through substitution of less harmful substances or by minimizing the quantity of an extremely hazardous substance present at any one time), as opposed to those which merely provide additional containment, are the most preferred.

The Senate Report is entirely consistent with a preference for the hierarchy of controls that forms the basis of STAA.

b. STAA Evaluation

Applicability

i. Comments

Several commenters recommended that EPA expand STAA requirements to cover more facilities. Some of the commenters highlighted that the proposed rule would only require approximately 5 percent of RMP facilities to conduct STAAs, which is a small subset of facilities. Some of the commenters suggested EPA require all RMP facilities to develop a hierarchy of hazard controls in sequence and priority order to eliminate risks of catastrophic releases. One commenter noted that EPA has failed to justify excluding any refineries, chemical manufacturing plants, pulp/paper mills, wastewater treatment, agricultural chemical or fertilizer plants, or thousands of other hazardous facilities where safer technologies are available.

One commenter claimed that there was no valid justification not to require a refinery or chemical manufacturer to assess IST and consider ways to operate more safely simply because it was not within 1 mile of another refinery or chemical plant. The commenter claimed that the 1-mile radius restriction was unworkable as well as unjustifiable and that it was unclear how to determine the distance restriction. The commenter stated that a 1-mile radius restricted the likely impact area for severe hazards and releases from refineries and chemical plants especially for communities where there are many facilities within a 1-to-10-mile radius that can impact health, the ability of communities to evacuate, and the ability of first responders to assist. The commenter additionally noted that a hurricane, flooding, wildfire, or earthquake tended to have impacts greater than a 1-mile radius.

Several commenters stated that the use of the 1-mile distance from fencelines instead of process location is unreasonable as there are facilities that have processes hundreds of yards from their fenceline. The commenters suggested that this additional distance should be accounted for in this

[79] H.R. Rep. No. 101–952 (1990) (Conf. Rep.).

[80] S. Rep. No. 101–228 (1989).

provision and requested that EPA use distances between the covered processes at the adjacent stationary source as opposed to fencelines.

A couple of commenters stated that STAA is inappropriate and cost-prohibitive for existing processes. These and other commenters urged that EPA should limit any STAA requirement to the design and development phases of new processes. A couple of commenters stated that the reasons different technologies are not implemented after a facility is already built are complex—ranging from chemical production or storage capability to life expectancy of operating equipment, capital expenditures, and market demands. Some commenters noted that EPA does not have the statutory authority under CAA section 112(r) to impose facility design requirements at any stage of a regulated facility's lifespan, much less for existing facilities.

A couple of commenters noted that the considerations of STAA would have little relevance among the diverse processes, formulations, and applications relevant to the fertilizer industry, specifically. The commenters added that forcing companies to incorporate this ill-fitting approach in their PHAs would lead to higher RMP-compliance costs that would be passed on to farmers and consumers. One of the commenters further added these increased costs provide no benefit to the communities in which regulated facilities are located.

ii. EPA Responses

EPA agrees in part with commenters requesting that the applicability of the STAA provision be expanded to apply to more facilities compared to the requirements included in the proposed rule. In this final rule, EPA is expanding the initial STAA evaluation to all Program 3 facilities with NAICS 324 and 325 processes. EPA believes that high RMP accident frequency among NAICS 324 and 325 processes as shown by recent data [81] presented in the proposed rule, is reasonable justification for requiring RMP owners and operators to evaluate safer technologies and alternatives to help prevent accidental releases. As noted in the proposed rule, between 2016 and 2020,[82] sector accident rates (unique facilities having accidents) for NAICS 324 and 325 were, respectively, seven times higher (23 percent, n = 41 out of 177) and two times higher (6 percent, n = 96 out of 1631) than the rate for all RMP-regulated facilities (87 FR 53578).[83] By expanding applicability of the STAA evaluation to these additional NAICS 324 and 325 processes, EPA expects to also capture complex facilities in less facility-dense areas that nonetheless may cause significant harm to human health and the environment.

In response to the comment stating that EPA has failed to justify excluding any hazardous facilities where safer technologies or alternatives are available, EPA notes that it has provided justification for applying the STAA requirement to facilities with NAICS 324 and 325 processes and does not believe that the final provisions have been limited arbitrarily, or that the Agency's decision to limit applicability of the STAA provisions to the petroleum refining and chemical manufacturing sectors implies that other sectors do not have viable safer technology alternatives. EPA notes that sources involved in complex manufacturing operations have the greatest range of opportunities to identify and implement safer technologies, particularly in the area of inherent safety, because these sources generally produce, transform, and consume large quantities of regulated substances under sometimes extreme process conditions and using a wide range of complex technologies. Therefore, such sources can often consider the full range of inherent safety options, including minimization, substitution, moderation, and simplification, as well as passive, active, and procedural measures. Further, EPA notes that RMP facilities in the selected sectors have been responsible for a relatively large number of accidents, deaths, injuries, and property damage and have significantly higher accidents rates as compared to other sectors. The 5 percent of sources mentioned by the commenter, augmented by those refineries and chemical manufacturer sources that have had accidents in the past 5 years, are responsible for 42% of the total accidents from RMP-covered sources over the period from 2016–2020, and 83% of the accident damage. Concentrating the most demanding requirements on this subset of sources recognizes the track record of heightened risk presented by these sources to their nearby communities.

While EPA is not requiring all Program 3 sources, or all sources in industry sectors where feasible safer technology alternatives have been identified to perform a STAA, the Agency encourages such sources to consider performing a STAA, and to determine practicability of IST or ISD considered, even if they are not subject to the STAA provisions of the final rule. EPA expects guidance for this provision and the data resulting from the STAA Technology Transfer described in section e. of this section will be useful for all facilities to adopt to identify potential IST/ISD and safeguards. As noted in the preamble of the 2016 proposed amendments rule, provisions in the existing rule provides several incentives to encourage the use of STAA and the adoption of safer technologies, including having applicability based on a chemical threshold, allowing a source to take credit for passive mitigation in calculating its worst-case scenario and both passive and active controls when calculating its alternative scenarios (81 FR 13663, Mar. 14, 2016). Consistent with EPA's general approach to the RMP regulations, the Agency allows flexibility for owners and operators to adopt various methods to meet performance standards, with more specific, demanding standards for sources that pose a greater likelihood of an accidental release and have greater complexity, and for sources that pose a greater risk to nearby communities.

In the final rule, the definition of the 1-mile radius is relevant to the applicability of the IST/ISD practicability assessment and safeguard implementation only. Acknowledging that refineries and chemical manufacturers have sector accident rates that are higher than the general rates for RMP-covered facilities, close co-location of sources in NAICS codes 324 and 325 further increases the risk to the public that may be potentially exposed to a

[81] Such data are also consistent with accident frequency data that formed part of the basis for the STAA applicability provisions in the 2017 amendments rule. See 81 FR 13668–69, March 14, 2016 (amendments rule NPRM); 82 FR 4632–34, January 13, 2017.

[82] Due to a lack of alternative data describing RMP accident impacts more comprehensively, EPA chose this five-year dataset to reflect the most recent trends regarding RMP accidents. EPA used the August 1, 2021, version of the RMP database to complete its analysis because under 40 CFR 68.195(a), facilities are required to report RMP accidents and specific associated information within six months to the RMP database. Therefore, the RMP database as of August 1, 2021, is expected to include RMP accidents and their specific associated information as of December 31, 2020. However, because accident data are reported to the RMP database by facility owners and operators, EPA acknowledges the likelihood of late-reported accidents affecting these last few years of data because some facilities may have not reported their RMP accidents as they are required to do. See sections 3.2 and 3.3 of the RIA for more on this and other limitations on the number and costs of baseline accidents.

[83] The list of these accidents and their details can be found in the Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022), Appendix A, *https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0065.* These accidents are specifically identified in Column BZ.

release from multiple sources. It is appropriate to increase the stringency and transparency of the requirement for so situated sources. Discussion of the application of the 1-mile criteria is later discussed in the Practicability Assessment and Safeguard Implementation sections of this preamble.

In response to the comments that the STAA requirement should be limited to the design and development phases of new Program 2 and Program 3 processes, EPA disagrees. While the greatest potential opportunities for using IST may exist early in process design and development, many IST options may still be practicable after the initial design phase. Furthermore, STAA involves more than just IST. Safer technology alternatives also include passive measures, active measures, and procedural measures, and these measures can be modified and improved after the initial design of a facility. EPA notes that while many RMP-regulated facilities were originally constructed decades ago, major enhancements have been reported in some plants that have been operating for many years. Moreover, to the extent that particular measures are cost-prohibitive, the rule allows for that to be a factor in assessing whether a measure is practicable.

The Agency disagrees with the comments that the CAA does not authorize the STAA provisions of this final rule. Both paragraphs (A) and (B) of CAA section 112(r)(7) authorize STAA and IST in particular. EPA cited all of section 112(r)(7) as authority for ''[e]ach of the portions of the Risk Management Program rule we propose to modify'' (81 FR 13646, March 14, 2016). The authority section for 40 CFR part 68 references CAA section 112(r) and is not limited to particular paragraphs. The proposed rule also noted that paragraph 112(r)(7)(A) had been invoked in the rulemaking petition on IST. Therefore, EPA provided sufficient notice that the Agency contemplated action under any authority under CAA section 112(r)(7). Nevertheless, EPA also views its authority to require STAA assessments or an IST review, or implementation of safeguards to reduce risk as being consistent with paragraph 112(r)(7)(B). Under paragraph (B), EPA has authority to develop ''reasonable regulations . . . for the prevention of accidental releases.'' The reduction in severity of conditions in a process plainly impacts the accidental release conditions and thus the modeling called for in section 112(r)(7)(B)(ii)(I). Moreover, section 112(r)(7)(B)(ii)(II) specifically mentions that prevention programs in risk management plans shall provide for ''safety precautions;'' STAA measures are a type of safety precaution. Finally, as noted above, the Conference Report for the 1990 CAAA and the Senate Report both demonstrate that Congress intended the regulations to prioritize STAA as a prevention measure.

With regard to comments relating to STAA requirements for the fertilizer industry, EPA is not requiring agricultural fertilizer retail facilities to perform a STAA, and thus there should be no burden to this particular industry as a result of the STAA provision. The STAA requirement in the PHA will only apply to Program 3 facilities in chemical manufacturing (NAICS code 325) and petroleum and coal products manufacturing (NAICS code 324).

c. Practicability Assessment

i. Comments

One commenter expressed support for EPA's proposal to require owners and operators to identify, evaluate, and document the practicability of implementing inherent safety measures, including documenting the practicability of publicly available safer alternatives. Another commenter stated that EPA should include the STAA practicability assessment as part of the PHA because such an assessment will provide additional context to the public, local officials, and emergency managers regarding a facility's consideration of risk management. The commenter added that the assessment should be used internally by the facility to plan future process and technology improvements to increase safety. One commenter urged EPA to move beyond just the assessment and reporting of safer technologies and require that facilities implement the identified alternatives when practicable, working with employees and communities to do so expeditiously.

One commenter opposed the proposed new 40 CFR 68.67(c)(9)(ii) and stated that EPA should not adopt the proposed practicability assessment requirement. The commenter expressed opposition to any requirement to consider IST in existing processes at covered stationary sources. A couple of commenters questioned how EPA, focused on process safety, would be able to assess social and economic factors as part of the PHA STAA component. The commenters noted that the consideration of ''social'' factors extend far beyond the traditional, performance-oriented ''process safety'' scope of a PHA, presenting a conflict with the scope of the PHA required by the OSHA PSM standard. The commenters also noted that EPA's ''practicability'' definition and evaluation does not distinguish between technologies or practices that have been proffered in research papers or demonstrated in pilot plants versus at the large-scale facilities subject to the RMP and required to perform a STAA. The commenters emphasized that ''real-world'' technologies should be the focus of the STAA, not theoretical or possible technologies that have not been tested or tried at RMP-regulated sources.

ii. EPA Responses

In this final rule, EPA is expanding the applicability of the IST/ISD practicability assessment to apply to more facilities compared to the requirements included in the proposed rule. The IST/ISD practicability assessment will also apply to the owner or operator of a facility with Program 3 processes in NAICS codes 324 and 325 that has had an accidental release that meets the accident history reporting requirements under 40 CFR 68.42 since the facility's most recent PHA. As EPA noted in the 2019 reconsideration rule, a past accident is one of the best predictors of future accidents that could potentially threaten a facility's nearby community. Additionally, as indicated in the proposal, of the 70 facilities experiencing 2 or more incidents between 2016 and 2020, 43 (60 percent) were in NAICS 324 and 325. The facilities required to conduct practicability assessments for IST/ISDs identified in the STAA accounted for 42% of all accidents and 83% of the cost of accidents among all RMP facilities during the period from 2016–2020.[84] A more in-depth look at implementation of IST/ISD by: (1) These facilities with accidents; (2) those identified in the proposal at facilities with processes in NAICS 324 and 325 located within 1 mile of another NAICS 324 or 325 facility; (3) and facilities with hydrofluoric alkylation, should lead to avoiding or reducing hazards at these facilities. At this time, EPA believes it is best to further focus the practicability assessment of IST/ISD on this subset of facilities as they present an even more heightened risk to a facility's surrounding community than other facilities with NAICS 324 and 325 processes.

EPA agrees that the practicability assessment will provide the public and local emergency managers with important context regarding a facility's

[84] Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

consideration of safer technologies and alternatives. In response to the comment that the practicability assessment should be used by facilities to increase safety, EPA believes that the final rule will allow the owner or operator to consider the potential for risk reduction, risk transfers, and tradeoffs when determining whether it is practicable to implement ISTs or ISDs considered. IST is a relative concept dependent on the hazard, the technology, and the facility. Therefore, EPA is requiring facilities to only consider IST as a possibility for addressing hazards rather than requiring ISTs be implemented. The final rule will give the facility owner or operator the flexibility to assess and to determine the practicability of any measures considered based on various factors for IST (including those involving risk transference).

In response to the comment that EPA should require facilities to implement identified alternatives when practicable, in this final rule, EPA is requiring implementation of at least one passive measure at an applicable facility, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure; further discussion of this requirement is below in the Safeguard Implementation section (V.B.3.d) of this preamble. EPA is not requiring implementation of identified IST. EPA believes facility owners and operators will adopt IST even in the absence of a mandate when it is practicable technically and economically and when the hazard reduction is significant. Part of the basis for this belief is the likelihood that most of the economic savings resulting from reduced accidents will be from reduced onsite property damage to the owner or operator's facility.

In response to the comment that the consideration of ''social'' factors extends far beyond the traditional, performance-oriented ''process safety'' scope of a PHA, EPA disagrees. While the PHA identifies the hazards, the RMP PHA requires the facility to identify the risk management measures applicable to eliminating or reducing the risks from the process hazards. EPA believes that it is appropriate for a facility to consider the five practicability factors (*i.e.,* economic, environmental, legal, social and technological) for evaluating the appropriateness of implementing for potential IST measures because some IST can involve significant costs or involve impacts that go beyond the facility. These factors are recognized and further discussed in in CCPS' 2019 ''Guidelines for Inherently Safer Chemical Processes, A Life Cycle Approach,'' 3rd edition, and NJDEP's Guidance for Toxic Catastrophe Prevention Act (TCPA), ''Inherently Safer Technology (IST) Review,'' Attachment 1 ''Feasibility guidance.'' [85]

In response to comments stating that ''real-world'' technologies should be the focus of the STAA, not theoretical or possible technologies that have not been tested or tried at RMP-regulated sources, EPA expects that facilities will only evaluate chemical substitutes that have already been shown to be commercially viable and does not expect facility owners or operators to expend a major effort on hypothetical or untested chemical substitutes or uses. This approach is consistent with EPA's authority to require reasonable regulations that prevent accidental releases to the greatest extent practicable.

In the final rule, the definition of the 1-mile radius is relevant to the applicability of the practicability assessment and safeguard implementation only. Acknowledging that refineries and chemical manufacturers have sector accident rates that are higher than the general rates for RMP-covered facilities, close co-location of sources in NAICS codes 324 and 325 further increases the risk to the public that may be potentially exposed to a release from multiple sources. In these sectors, the worst-case scenarios of 80 percent of sources extend at least 1 mile, therefore the communities surrounding these sources will typically face multiple threats. It is appropriate to increase the stringency and transparency of the requirement for so situated sources. In the proposal, EPA proposed to define facility location based on distance to the facility fenceline but sought comment on other definitions of facility proximity. Recognizing that the distance from a process is a more accurate way to calculate a release scenario than the distance from a fenceline, EPA will nevertheless retain 1 mile from the fenceline as the applicability criterion, as opposed to 1 mile from process locations, both for simplicity in implementation and also in deference to restrictions on source-specific information on release scenarios. The Agency believes that regulated facilities, the public, and implementing agencies can more easily calculate and verify a fenceline-to-fenceline measurement than a process-to-process measurement because it does not require access to facility-specific process information.

[85] *https://www.nj.gov/dep/enforcement/tcpa/downloads/istguidance_rev2.pdf.*

d. Safeguard Implementation

i. Comments

A couple of commenters recommended EPA require industries to seek out solutions that pose less inherent risk and danger to their employees and surrounding communities and that they implement all practicable alternatives that could eliminate risks of a catastrophic release. A couple of commenters urged EPA to require that facilities work with employees and communities to implement the identified alternatives when practicable. A few commenters called on EPA to add a requirement to implement recognized safer alternatives. One of the commenters stated that relying on voluntary measures alone does not satisfy the requirement of the Act for EPA to assure prevention ''to the greatest extent practicable.'' The commenter noted the proposal is inconsistent with the CSB recommendation requiring both assessment and implementation of IST. One commenter claimed that relying on voluntary implementation alone is insufficient to protect fenceline communities who have seen nearby facilities repeatedly refuse to implement safer ways to operate, no matter how inexpensive or easy they may be. Because risks faced by nearby communities impose costs that are external to the firm, there is a market failure and firms do not face an appropriate level of incentive to reduce these risks. The commenter stated that voluntary measures cannot be relied upon given that market failure has delayed and prevented common-sense solutions. The commenter stated that, while the STAA, practicability assessment, and justification report are all valuable and should be expanded and finalized, the rule should require the implementation of practicable IST through careful consultation with workers and worker representatives and community members.

Some of the commenters asserted that EPA does not have the statutory authority, under section 112(r) of the CAA, to impose facility design requirements at any stage of a regulated facility's lifespan, much less for existing facilities. Several commenters noted IST and ISD are in the best interest of facilities to implement where there are practical and effective; therefore, there is no reason to require it. The commenters also expressed concern over excessive costs to implement unnecessary technologies if required to implement inherently safer technologies.

The commenters urged EPA to allow facilities to decide what is best on a case-by-case basis due to instances where adopting an inherently safer process may not actually make a process safer when put into practice. One commenter added there are cases where there are no safer alternatives and conducting an STAA is not necessary, does little to improve safety, and creates extra complexity for employers to present a case to regulators for their processes. The commenter also said that regulations should be straightforward and easy to understand, so a vague requirement to require facility owners to present a case that their processes are safe will create confusion and not improve safety.

Some commenters noted that the proposed STAA requirement is solely for consideration of possible alternatives and has unproven and unquantified benefits that do not justify the annual cost of $51.8 million. One of the commenters added that EPA stated that they expect ''some portion of future damages would be prevented through implementation of a Final Rule,'' but they do not identify any benefits specifically tied to the STAA provision. The commenter expressed concern that EPA did not review and summarize literature on STAA in the proposed rule since there are a large amount of studies on its practical effectiveness; the commenter stated that there is consensus on its theoretical value as a tool to inform future investment decisions, and that once a facility has committed to a particular production technology, STAA is not particularly useful nor informative.

ii. EPA Responses

The CAA directs EPA to ''promulgate reasonable regulations . . . to provide, to the greatest extent practicable, for the prevention and detection of accidental releases . . .'' In some circumstances, solely relying on voluntary implementation of STAA measures is not reasonable and would be inadequate to prevent accidents ''to the greatest extent practicable.'' This is particularly true when safeguards are identified and generally deemed practicable, but not implemented. A reasonable decision to not implement such safeguards at a facility must be supported with a comprehensive review of factors like cost, risk reduction, risk transfer, employee input, and engineering that concludes the technology is not practicable contextually. EPA's 2022 SCCAP proposed rule emphasized the importance of identifying ''new risk reduction strategies, as well as revisit[ing] strategies that were previously evaluated to determine whether they are now practicable as a result of changes in cost and technology.'' Safer design and technology information and lessons learned are continually being generated, and facilities should integrate such updated information to help prevent accidents.

Taking an important step to reinforce these crucial factors, this final rule is requiring processes subject to the IST practicability assessment to also implement at least one practicable passive measure resulting from the STAA evaluation. For this provision, practicable active and procedural measures or their combination can be implemented as a substitute to practicable passive measures if no practicable passive measures are identified or if they achieve layers of protection equivalent to or greater than the risk reduction of passive measures. This provision is intended to reduce the risks of the accidental releases by requiring processes that EPA has identified to present a heightened risk to a community to implement reliable safeguards necessary to help prevent or mitigate chemical releases and their consequences; in particular, the provision requires RMP-regulated facilities with P3 processes: (1) In NAICS codes 324 and 325 located within 1 mile of another NAICS 324 or 325 facility; (2) in NAICS codes 324 and 325 that has had an accidental release that meets the accident history reporting requirements under 40 CFR 68.42 since the facility's most recent PHA; and (3) in NAICS 324 with hydrofluoric alkylation processes—to implement practicable safeguards that help prevent or mitigate chemical releases and their consequences.

The PHA requirements at 40 CFR 68.67 have always required sources to ''identify, evaluate and *control* the hazards involved in the process.'' Currently the provision does not prescribe exactly which type or what measures must be implemented to control the hazards. In guidance, the Agency discusses how sources can resolve hazard evaluation recommendations after identifying and evaluating solutions to control hazards, stating that, ''EPA does not require that you implement every recommendation. It is up to you to make reasonable decisions about which recommendations are necessary and feasible. You may decide that other steps are as effective as the recommended actions or that the risk is too low to merit the expense. You must, however, document your decision on each recommendation.'' [86] Guidance further indicates, ''You may not always agree with your PHA team's recommendations and may wish to reject a recommendation. OSHA's compliance directive CPL 2–2.45A(revised) states that you may decline a team recommendation if you can document one of the following: (1) The analysis upon which the recommendation is based contains relevant factual errors; (2) the recommendation is not necessary to protect the health of employees or contractors; (3) an alternative measure would provide a sufficient level of protection; or (4) the recommendation is infeasible. For part 68, you may also decline a recommendation if you can show that it is not necessary to protect public health and the environment.'' [87] While EPA continues to believe that the source has the primary expertise and resources to weigh decisions on process design, process safety and accident prevention, EPA is concerned that controlling hazards and adopting reasonable safety measures and layers of protection necessary to keep the public and environment safe from chemical releases based on reasoned, documented decision-making do not always occur.

In two recent CSB accident reports, ''FCC Unit Explosion and Asphalt Fire at Husky Superior Refinery'' [88] and ''Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit,'' [89] the CSB addresses safeguards that should have been in place to prevent or mitigate major accidents at refineries. These cases highlight the consequences to workers and the surrounding community when sources do not take the necessary steps to implement safeguards to control known hazards.

On April 26, 2018, an explosion and subsequent fire occurred at Husky Energy's Superior Refining Company LLC refinery in Superior, Wisconsin (Husky). The incident occurred during a planned maintenance event when flammable hydrocarbons inadvertently mixed with air. As a result of the explosion and fire, 36 refinery and contract workers were injured and sought medical attention. The CSB found that Husky failed to properly

[86] EPA, General RMP Guidance—Chapter. 6: Prevention Program (Program 2) (2004), pp. 6–11, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-06-final.pdf.*

[87] EPA, General RMP Guidance—Chapter 7: Prevention Program (Program 3) (2004), pp. 7–7, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-07-final.pdf.*

[88] *https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/.*

[89] *https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.*

implement safeguards that could have prevented the inadvertent mixing of air and hydrocarbons during the shutdown. The safeguards CSB identified, a steam barrier, gas purge, and slide valves, are typically vital to this type of process and are generally known and broadly applied within the refining industry. Not applying these safeguards allowed oxygen to enter and accumulate in process equipment containing flammable material, which ignited and exploded.

On Friday June 21, 2019, Philadelphia Energy Solutions (PES) refinery in Philadelphia, Pennsylvania, had a release of propane and toxic hydrofluoric acid vapor from a ruptured pipe in the PES refinery alkylation unit. The vapor found an ignition source, causing a fire and multiple explosions. Five workers and a firefighter experienced minor injuries during the incident and response. The incident also resulted in estimated property damage of $750 million. The CSB determined the cause of rupture was from a piping component that corroded. CSB indicated that the absence of safeguards, remotely operated emergency isolation valves, and passive safeguards to prevent incident-induced damage to the water mitigation system, contributed to the severity of the incident.

As discussed in previous rulemakings, the hierarchy of control methods in an STAA analysis—IST/ISD, passive, active, procedural—systematically provides for the identification of practicable control methods. The Agency expects the STAA analyses to lead to new hazard control approaches at sources where management finds such approaches to be reasonable and practicable. The Agency acknowledges requiring facilities to implement IST can involve extensive changes to a facility's process, depending on the IST, especially if it involves substitution of alternative chemicals and/or major process redesign to existing processes. EPA believes that measures lower on the hierarchy of controls, passive, active and procedural measures, when implemented appropriately, can be used to help operate a hazardous chemical process safely and can also reduce hazard risks of that process. When compared with IST, these measures could also more likely be added, modified, and improved after the initial design or operation of a facility.

Nothing in this rule forces the adoption or abandonment of any technology or design. The mandate we adopt is limited to selecting additional mitigation periodically for specific processes so long as the risk of an impact release persists,[90] with a preference consistent with the well-understood hierarchy of controls.

EPA is requiring implementation of passive measures as a priority rather than active and procedural because it is the next highest level below IST on the hierarchy of controls and the most reliable in comparison to active and procedural safeguards, as they reduce risks without human, mechanical, or other energy input. As discussed in CSB's PES report, active safeguards that require a person or technology to trigger their activation have the potential to fail in major incidents involving fire or explosions, which was the case in the PES accident and could be a likely release scenario for flammable substances, which are regulated substances often present at refineries and chemical manufacturers.

EPA recognizes that passive safeguards may not exist or may not be practicable for a variety of reasons and other safeguards are needed to cover gaps in process safety risk reduction. EPA also recognizes that a passive measure may be even more effective when applied appropriately with other measures. This concept of layers of protection acknowledges that individual safeguards are not completely reliable or effective, and thus multiple safeguards (''layers'') may be needed to minimize the chances of an initial fault propagating to a full-blown incident with potential for harm. This is often illustrated using the ''Swiss Cheese'' model for incidents. In this model, each safeguard layer has the potential to fail, with highly reliable safeguards (*e.g.,* ''inherent'' ones) having relatively few ''holes'', and less reliable safeguards (*e.g.,* ''procedural'') having more. While no single layer can adequately control the hazard, having enough adequately reliable safeguards can greatly reduce the chance of all of the ''holes'' lining up so that an incident actually occurs. This final rule will give the facility owner or operator the flexibility to assess and potentially implement IST, implement passive measures, or implement a combination of active and procedural measures to reduce risk associated with a process. The approach adopted in this final rule does not require a facility to implement a hazard reduction approach beyond what is to the greatest extent practicable among the reasonable options.

EPA acknowledges that because the requirement to control hazards has been a PHA requirement since the inception of the rule, some passive (or equivalent) safeguards to control hazards are likely already in place within facility processes. Facilities that have already implemented passive measures or an equivalent level of risk reduction should document their implementation in their next PHA, determine whether there is additional information that should be considered in their STAA, and continue to consider additional passive (or equivalent) measures during subsequent PHA re-validation cycles.

The Agency recognizes that requiring any implementation of STAA measures is a departure from both the 2017 amendments rule (82 FR 4648–49, Jan. 13, 2017) and the 2022 proposed rule and that the Agency identified reasons for not requiring implementation of any STAA in the 2022 proposed rule (87 FR 53580, Aug. 31, 2022).[91] However, the 2017 amendments rule and the 2022 proposed rule primarily focused discussion on the reasonableness of mandating adoption of IST/ISD rather than passive, active, or procedural measures. For example, in 2017, EPA explained that one reason the Agency did not require implementation of IST/ISD is that a source may reasonably decide to employ more than one method of hazard reduction to address a hazard or that a given type of safer technology may not exist for a particular hazard point (82 FR 4649, Jan. 13, 2017); consistent with these observations, this rule allows a source to adopt layering active and procedural measures to achieve the equivalent risk reduction a passive measure would achieve and does not adopt a requirement for an IST/ISD at each hazard point. The Agency retains substantial flexibility for owners and operators to select among passive measures they deem appropriate for their stationary sources. The final rule allows for consideration of factors highlighted in the 2017 amendments rule like chemical formula specifications for toll manufacturers, the potential for risk transfer, supply chain

[90] If passive mitigation or other adopted mitigation measures would be sufficient to change all NAICS 324 or 325 processes to Program 1, then the source no longer would have an obligation to add additional mitigation measures in future PHAs, as the mandate for safeguard implementation only applies to Program 3 processes. If the adopted mitigation measure is insufficient to meet Program 1 at all NAICS 324 and 325 processes at the source, then the potential for offsite impacts presenting risk would remain.

[91] The 2019 reconsideration rule did not specifically discuss requiring or not requiring implementation of measures identified in a STAA because it more generally rescinded all prevention measures promulgated in 2017. With no requirement to perform an STAA, there was no need to assess whether implementation of measures identified in such an analysis needed to be implemented. The proposed rule and this final rule discuss the reasons for adopting a different broad approach to prevention than that adopted in 2019.

limitations, and the need to address security implications of any change when assessing whether to reject particular passive measures. See 82 FR 4635–36 (toll manufacturers), 4643 (risk transfer), 4648 (supply chain), and 4649 (security).

The 2022 proposed rule contended that a requirement for implementation of IST/ISD or any measure was unnecessary because sources were likely to implement practicable measures when economically and technically reasonable and risk reduction would be significant. EPA partially based this contention on the observation that most of the economic savings from reducing accidents would accrue to the source itself (87 FR 53580, Aug. 31, 2022). However, not all damages accrue to the source responsible for the accident. For example, offsite impacts such as injuries, sheltering in place events, evacuations, environmental damage, and so on are experienced by people other than the regulated facility. Because these costs are external to the facility, there is a market failure, and firms do not have an appropriate level of incentive to prevent them. This market failure has been noted by commenters with respect to catastrophic events, the prevention of which is a primary purpose of enacting CAA section 112(r). Catastrophic events impose extensive burdens on people external to the source responsible for the accident. Moreover, these incidents are low probability, high consequence events that are difficult for owners and operators to assess; therefore, it may be unreasonable to rely primarily on sources to make the ultimate decision on whether to adopt any measures at all. The standard adopted in this final rule for sources presenting elevated risks to communities, wherein EPA mandates adoption of at least one passive measure at the facility, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure, reasonably addresses the potential market failure that would lead to less implementation than would be necessary for risk reduction.

EPA disagrees with commenters indicating implementation of STAA measures has no proven benefits. A review of corrective actions following RMP accidents provides insight that practicable methods to address hazards are not infrequently found after accidents, which suggests the rule could be strengthened by providing incentives to implement those controls in advance of the accident. In reviewing RMP data from facilities subject to the practicability assessment and this STAA safeguard implementation provision (621 facilities), 59 percent of facilities indicated in their most recent PHA, some type of change was implemented. On average, 1.2 process safety changes [92] were implemented because of the PHA, but of those facilities having accidents (16.8 percent), an average of 2.2 process safety changes were made after an accident occurred.[93] This review was one piece of evidence supporting EPA's reasoned judgment that the risk reduction benefits of the STAA implementation justified the costs. Therefore, as RMP facility process change data has shown, EPA expects there are benefits to make risk reduction changes through the PHA prior to an accident occurring.

In response to comments concerning costs for implementing STAA measures, EPA believes there is an overemphasis on initial costs leading to less consideration of safer, reliable methods to reduce process risks. CCPS' 2019 ''Guidelines for Inherently Safer Chemical Processes, A Life Cycle Approach'' discusses the tradeoff of initial and operating costs of implementing different STAA measures. CCPS indicates that while inherently safer and passive measures do tend to have higher initial capital costs, operating costs are usually lower than those for the other measures. For active measures as compared to inherently safer and passive measures, reliability is typically lower, and complexity is greater. Operating costs are also actually likely to be the greatest for active solutions. While procedural measures are most often tempting solutions due to their initial very low capital cost and typically lower complexity, they are often also the least reliable and should be considered only after other solutions have been explored. Similarly, EPA believes passive measures (or active/procedural equivalent) measures that reduce risk and are practicable should be implemented.

The Agency is not requiring formal practicability assessments (as is now required for IST) for passive, active, or procedural measures. Since evaluation of passive, active and procedural measures have been a part of the RMP rule, leading to implementation of some, it is expected that the determination of their practicability already occurs. The Agency believes the requirement to determine what actions are to be taken in 40 CFR 68.67(e) suffices as a practicability determination for the less extensive upgrades or changes to the process as compared to IST. However, to ensure the assessment determining a measure is not practicable complies with the final rule definition, sources will be required to document this conclusion to the implementing agency's satisfaction; this requirement will help ensure costs alone are not the sole factor in determining practicability.

Finally, contrary to the assertion that the statute does not authorize regulations that impose design standards, the Agency notes that the statute explicitly provides the Administrator with the authority to promulgate ''design, equipment, work practice, and operational requirements'' in CAA section 112(r)(7)(A), as well as requirements for ''preventing accidental releases of regulated substances, including safety precautions and maintenance'' in CAA section 112(r)(7)(B)(ii)(II). The regulation promulgated in this final rule simply imposes standards on continuing safe operations and equipment. Furthermore, the regulations required by CAA section 112(r)(7)(B)(i), ''shall cover the *use, operation,* repair, *replacement,* and maintenance of *equipment* to monitor, detect, inspect, and *control*'' accidental releases of regulated substances as appropriate (emphasis added). Terms such as ''use'' and ''operation'' necessarily allow EPA to address ongoing activities and not simply the pre-construction phase, and ''replacement'' of ''equipment'' to ''control'' releases authorizes EPA to require upgrades to release prevention measure such as practicable passive control measures. As discussed above, the Conference Report and the Senate Report provide ample support for requiring implementation of process and control measures to lessen the likelihood and impact of accidental releases.

e. STAA Technology Transfer

i. Comments

Several commenters supported EPA's proposed technology transfer provisions. A few commenters stated that EPA should require every RMP facility to routinely report the safer technologies/designs evaluated, implemented, or planned because, as

[92] Changes include chemical reduction, chemical increase, change in process parameters, installation of process controls, installation of process detection, installation of perimeter monitoring, installation of mitigation systems, revised maintenance, revised training, revised operating procedures, or other changes not included in these categories. These change categories are those reported in RMPs under 40 CFR 68.175(e)(6).

[93] The list of RMP facilities whose most current RMP plans (as of December 31, 2020) were reviewed is provided in the docket for this rulemaking, EPA–HQ–OLEM–2022–0174, *RMP facilities in PHA_accident change analysis.*

proposed, 95 percent of RMP facilities will not report any solutions data. One of the commenters stated this will allow EPA to better assess the impacts of its own activities for promoting prevention of catastrophic releases. Another commenter suggested that this reporting occur as a regular part of semi-annual CAA compliance reports, and at a minimum, as a regular part of RMP reporting to EPA. One commenter stated that EPA should require the STAA-exempt 95 percent of RMP facilities to report whether they have evaluated IST/ISD and, if so, identify the major options evaluated, implemented, or planned. The commenter stated that this approach would be low cost, fill a major information gap, and yield invaluable insights. Another commenter supported expanding the technology transfer provision to cover more facilities and gather additional valuable information, including on wastewater and water treatment plants.

A couple of commenters opposed the submission of STAA findings as part of the STAA technology transfer section. One commenter noted that any submitted STAA findings would probably not consider the nuance of the real practicality of switching between technologies, and if facilities are not required to switch to alternate technologies, it is unclear how EPA intends to effectively use these data. Another commenter stated that EPA should not require reporting of STAA measures implemented in facilities' risk management plans because this requirement would create significant potential for third parties to insert themselves into what is a highly technical and site-specific analysis. The commenter added that EPA does not provide a clear basis in the proposed rule for its assumption that reporting and public availability of information on IST/ISD measures implemented will improve facility safety or mitigate the potential for accidental releases in any measurable way; therefore, determining that reporting this information in the RMP is simply not justified.

ii. EPA Responses

EPA is requiring that basic information on IST, facility information, categories of safer design identified and implemented and causal factor for initiating safer design implementation be provided in the RMP submission in accordance with 40 CFR 68.175(e)(7). Facilities must provide in their RMP any IST/ISD measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation). These technology transfer provisions apply to all facilities required to conduct any component of STAA (evaluation or practicability) under the final rule. This reporting is also voluntary for all other facilities, including deregistered facilities, by which EPA expects to capture useful information about how some facilities, on their own accord, choose to make their processes safer. EPA intends for this not to be a cumbersome exercise, but rather, one that is based on information facilities likely already have. The intended fields of check boxes, dates, and numbers that summarize STAA activities for this provision will help facilitate data analysis for EPA to compile and make available for other industries to identify safer alternatives.

EPA believes that the primary utility of STAA information for the public is to identify whether facilities are implementing IST and the nature of that change. In addition to information exchanged through an information request under 40 CFR 68.210, EPA encourages facilities to provide information about any IST or other safer technology alternatives that the facility is using or could be using at the public meeting forum under 40 CFR 68.210 or any other community outreach opportunity. Facilities should expect that a community wants to discuss hazards and risks associated with their chemical processes. Effective communication with the public can be an opportunity to develop robust relationships with communities, and trust is gained when considering the needs and challenges facing those potentially affected by accidents. Additionally, as will be discussed further in the Information Availability section (VII) of this preamble, having information available to the public builds upon the planning approach of Emergency Planning and Community Right-to-Know Act (EPCRA) and Agency studies of the value of right-to-know in emergencies, and promotes accident prevention by facilitating public participation at the local level. The Agency expects a more informed and involved public to have less fear of the unknown.

C. Root Cause Analysis

1. Summary of Proposed Rulemaking

a. Definition of ''Root Cause'' in 40 CFR 68.3

EPA proposed to define ''root cause'' in 40 CFR 68.3 to mean a fundamental, underlying, system-related reason why an incident occurred.

EPA did not propose a definition of ''near miss'' as part of the proposed rulemaking. Nevertheless, EPA solicited comments on a potential definition of ''near miss'' that would address difficulties in identifying the variety of incidents that may occur at RMP facilities that could be considered near misses that should be investigated. EPA solicited comments on a universal ''near miss'' definition, as well as comments on strengths and limitations of the definition provided by NJDEP and how the definition may clarify requirements for incident investigations. EPA stated that, based on these comments, EPA may propose a definition of ''near miss'' in a future rulemaking.

b. Incident Investigation/Root Cause Analysis, 40 CFR 68.60 and 68.81

EPA proposed to revise 40 CFR 68.60, which is applicable to Program 2 processes, and 40 CFR 68.81, which is applicable to Program 3 processes, by adding a new paragraph (h) which would require the owner or operator to investigate specific factors that contributed to an incident, for incidents that meet the accident history reporting requirements under 40 CFR 68.42. Proposed paragraph (h)(1) would require that a report be prepared at the conclusion of the investigation and completed within 12 months of the incident (though it allowed for facility owners or operators to request an extension from the implementing agency). Proposed paragraph (h)(2) would require specific factors to be investigated, including the initiating event, direct and indirect contributing factors, and root causes. Additionally, determination of root causes would be required by conducting an analysis for each incident using a recognized method.

2. Summary of Final Rule

EPA is finalizing the definition of root cause under 40 CFR 68.3 with modifications. Root cause will be defined as a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems and, if applicable, in process design.

EPA is finalizing the provisions of the incident investigation sections at 40 CFR 68.60(h) and 68.81(h) as proposed.

Although EPA solicited comments on a potential definition of ''near miss,'' EPA is not finalizing a definition of ''near miss.''

3. Discussion of Comments and Basis for Final Rule Provisions

a. Definitions

i. Comments

Root cause. A couple of commenters expressed support for the proposed definition of ''root cause.'' However, a commenter requested that if EPA determines that all incident investigations require a root cause analysis, EPA update the definition for ''root cause'' to remove the ''system-related'' and ''in management systems'' language. The commenter suggested that by focusing on system-related releases, EPA ignores that humans or environmental causes could be the cause of an incident. Conversely, another commenter suggested EPA revise the definition to state, ''Root cause means a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in process design and/or management systems.''

Near miss. Several commenters supported the development of a definition of ''near miss.'' Additionally, one commenter expressed a concern about selective enforcement in the absence of a clarifying definition, while another commenter said that without specificity to define a near miss, the language might have established due process concerns as the proposal failed to provide adequate notice to the regulated community. However, several commenters opposed the development of a definition for ''near miss,'' stating that they oppose a definition due to the broad nature of facilities subject to the rule and that developing a definition would be difficult due to the context required to determine what a near miss is. Another commenter suggested that EPA provide guidance on near misses but allow facilities to determine their own definition. Additionally, several commenters opposed a universal definition of near miss, as a one-size-fits-all approach will be overburdensome and challenging for facilities to implement.

ii. EPA Responses

EPA is finalizing the proposed definition of ''root cause'' with modifications to include that the root cause must identify a correctable failure(s) in management systems, and if applicable, in process design. In finalizing this definition, EPA recognizes that an incident may have more than one root cause. EPA acknowledged in the proposal that the CCPS root cause definition identified that a root cause includes a correctable failure in management systems. EPA intended to use CCPS' definition in its entirety due to its wide use among the process safety industry. As such, EPA will include management systems as a correctable failure that must be identified when determining root causes for incident investigations. EPA also believes adding process design to the definition of root cause is useful as process design points to a specific management system failure that may offer facilities an opportunity to design their process more safely.

EPA did not propose a definition of near miss in the proposal. However, EPA will consider these comments when determining whether to develop a regulatory definition of ''near miss'' to identify incidents that require investigation in a future action.

b. Root Cause Analysis

i. Comments

Many commenters supported the proposed approach to require facilities to conduct root cause analyses after an incident. One of the commenters suggested that the proposed requirements would likely prevent harm from repeated incidents. Another commenter noted that root cause analyses provide an additional opportunity to better understand the processes, procedures, and culture that may contribute to accidents.

Several commenters did not support the revision of the incident investigation provision to include root cause analysis requirements. Several commenters suggested that EPA has not justified the additional regulation, shown that the current rules are ineffective, or proven that root cause analysis is effective at reducing accidents. A couple of the commenters stated that EPA does not provide data to show that repeat accidents are partially or fully caused by a facility's failure to conduct a root cause analysis. A commenter also stated that the concept of ''root cause'' can be misleading, as there is not always a singular reason for why an incident occurred. The commenter said EPA should recognize that a root cause analysis is not always the most appropriate post-incident investigation method. Several commenters noted that the inclusion of the root cause analysis requirements is duplicative of existing regulations or common industry practices, is unnecessary, and thus will not result in meaningful benefits. Several commenters stated that OSHA PSM programs already include root cause analysis as a part of incident investigations. A couple of commenters suggested that EPA not expand incident investigation thresholds without coordination with OSHA's anticipated updates to the PSM standard. One commenter noted that OSHA has primary jurisdiction on this issue, and therefore EPA should ensure consistency with current and future changes to the PSM.

ii. EPA Responses

EPA is finalizing the requirements as proposed. EPA agrees with those comments supporting the proposed provision and believes that requiring root cause analyses after RMP-reportable accidents, and including root cause information in incident investigation reports, is vital for understanding the nature of these events and how they may occur.

In response to comments asserting that EPA has not justified the root cause analysis requirement or provided data to show that repeat accidents are partially or fully caused by a facility's failure to conduct a root cause analysis, EPA acknowledges that such data has not been provided to show causation, but notes that EPA has not previously required a root cause analysis for incident investigations, and therefore, does not have data available to compare the frequency of repeat accidents at facilities conducting (or failing to conduct) root cause analyses. However, EPA did perform an analysis of EPA's RMP accident reporting data and identified repeat accidents at facilities within the same process.[94] The result of this analysis demonstrates that, among facilities reporting accidents, facilities that reported one accident often have a history of multiple accidents, thus indicating a failure to properly address circumstances leading to subsequent accidents. These accidents may have been preventable if root cause analyses had been required. EPA believes multiple accidents result, in part, from a failure to thoroughly investigate and learn from prior accidents.

With regard to comments about the appropriateness of a root cause analysis as a post-incident investigation method, EPA has provided detailed background information on the usefulness of root cause analysis in both the 2016 amendments proposed rule (81 FR 13638) and the 2022 SCCAP proposed rule (87 FR 53556). EPA also notes that the final rule does not require facilities to use a specific root cause analysis method, select from a predetermined list of root causes, or force-fit investigation findings into an inappropriate category.

[94] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

With regard to comments that noted potential overlap with existing regulations, EPA notes that a regulated source already subject to another requirement that duplicates the RMP root cause analysis requirement may use its compliance with the other requirement to demonstrate compliance with the equivalent RMP root cause analysis requirement. Additionally, EPA continues to routinely coordinate with OSHA to ensure that any incident investigation root cause analysis provisions do not contradict OSHA PSM requirements.

c. Applicability of the Root Cause Analysis Requirements

i. Comments

A commenter expressed support for EPA's proposal to limit the root cause analysis requirements to Program 2 and Program 3 processes. A couple of commenters recommended that EPA expand coverage of this requirement to apply to all RMP facilities. A couple of commenters proposed that EPA further limit facilities subject to the root cause analysis requirements. One of the commenters recommended that the root cause analysis requirement should only be mandated for Program 3 facilities, since they have the most complex processes, which is where root cause analyses are most useful. The commenter suggested that conducting root cause analyses is resource intensive and costly, and imposing the requirements on other non-Program 3 facilities will be overly burdensome without commensurate benefits. Another commenter recommended that EPA only require root cause analyses for larger, more complex water systems, as the root cause analysis process is resource intensive and burdensome. Commenters asked EPA to clarify that root cause analysis is still required where a process is decommissioned or destroyed.

ii. EPA Responses

EPA is finalizing the applicability of the root cause analysis provision, as proposed. EPA believes this provision is most appropriate for Program 2 and 3 processes because facilities with these processes have RMP-reportable accidents more often (Program 2 = 15 percent, Program 3 = 83 percent of total accidents from 2004–2020) and pose a greater risk to the public because their worst-case scenario distance would affect public receptors. Program 1 processes only account for few of the total RMP-reportable accidents (3 percent of total accidents from 2004–2020), do not have recent accident history with specific offsite consequences, and have no public receptors within the worst-case release scenario distance.[95]

While it is true that most RMP-reportable accidents occur at Program 3 processes, EPA decided that there was little justification for limiting the root cause requirements to only Program 3 processes, because serious accidents also occur at Program 2 processes (87 FR 53593). Also, the Agency notes that some of the accidents at Program 2 processes occur at publicly-owned water and wastewater treatment facilities that are not in Program 3 only because they are not located in a State with an OSHA-approved State Plan.[96] While State and local government employees at facilities in States with OSHA-approved State Plans must comply with State Plan requirements that are at least as effective as the Federal OSHA PSM standard, State and local government employees at facilities in States under Federal OSHA authority are not covered by the OSHA PSM standard or any equivalent measures. This results in regulated processes at these sources being placed in Program 2, even though the processes generally pose the same risk as similar processes at publicly owned water or wastewater treatment processes that are located at sources in States with an OSHA State Plan. With regard to those commenters that recommended narrowing the applicability of the root cause analysis requirement because of the burden associated with the requirement, EPA notes that the burden of the proposed root cause analysis is relatively small. Few sources will have to conduct a root cause analysis because accidents occur at only a small number of sources, and many sources already perform root cause analyses in a manner consistent with industry or company protocols. Therefore, EPA does not believe that the anticipated burden of this requirement is a rationale for revising the applicability of the requirements.

With regards to clarity on applicability of decommissioned or destroyed processes to the root cause analysis provision, the Agency did not propose, and therefore will not require, decommissioned or destroyed processes, as long as they remain in that decommissioned or destroyed state, to comply with this provision. As discussed in the previous rulemakings, commenters have not identified a significant number of release incidents at RMP facilities that had resulted in a destroyed or decommissioned process without any RMP accident report. The absence of a substantial number of examples leads the Agency to conclude that the gap is not significant enough to address at this time.

d. Use of a Recognized Investigation Method

i. Comments

Several commenters provided feedback on the investigation methods and analysis elements described in the proposed rule. Several commenters noted that EPA should not mandate the use of a recognized method for the analysis, as there are many ways to conduct the analysis. One of the commenters indicated that prescribing a method may interfere with a facility's engineering judgement and use of investigative practices that are tailored to their unique facilities. Another commenter said EPA should ensure that owners and operators have flexibility to modify recognized investigation methods to reflect the context, which may involve very complex or relatively simple processes or incidents. A couple of commenters requested that EPA define ''recognized investigation method'' to clarify what entity is approving a methodology. One of the commenters recommended revising the language to read ''investigation method recognized by applicable industry code writing or RAGAGEP establishing body.'' One commenter suggested that EPA require that incident investigations include staff with expertise in: the process involved, the facility's root cause analysis method, and overseeing incident investigation analysis.

ii. EPA Responses

EPA is finalizing, as proposed, the requirements that root causes must be determined through the use of a recognized method. The final rule will allow the owner or operator to determine root causes using a ''recognized method'' that is appropriate for their facility and circumstance. EPA disagrees that the Agency should specify recognized investigation methods or point to specific entities for such methods. Investigation methods evolve over time, and new methods may be developed. Therefore, any list promulgated by EPA in this rule may soon be obsolete. The Agency took a similar approach in the PHA requirements for the existing rule, where it listed several potential methods, but also included the option to

[95] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[96] See 40 CFR 68.10 (Program 2 eligibility requirements).

use an appropriate equivalent methodology. EPA recommends that owners and operators consult available literature on root cause investigation methodologies to select those appropriate for their facility and processes. For example, CCPS has published ''Guidelines for Investigating Process Safety Incidents,'' which provides extensive guidance on incident investigations, near miss identification, root cause analysis, and other related topics.[97]

In response to comments requesting that the incident investigation team be required to include someone knowledgeable in the root cause analysis technique, EPA believes this is already required under 40 CFR 68.60(c) and 68.81(c), where the incident investigation team is required to consist of ''persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.'' EPA intends this phrase to include a person knowledgeable in selection and use of root cause analysis techniques.

e. Investigation Timeframe

i. Comments

Several commenters suggested a shorter investigation timeframe. A few commenters suggested an initial report/investigation be completed within 90 days, and a final report within a shorter timeframe, such as 6 months. One commenter also suggested EPA require initiation of incident investigations and root cause analyses within 24 hours after the incident. Several commenters supported the 12-month requirement for completing an incident investigation. A couple of commenters also supported EPA allowing extensions, when necessary. One commenter also said EPA should not question extension requests from facilities, as some thorough investigations will require more than 12 months. Several commenters opposed the regulatory deadlines for root cause analysis investigations. A couple of commenters stated that based on the complexity of the incident and level of input needed from external technical experts, a 12-month timeline may not provide enough time. One commenter requested that EPA clarify that the 12-month timeline is only for the completion of the investigation, not when the recommendations must be implemented.

ii. EPA Responses

After considering these comments, EPA has is finalizing the requirement to complete incident investigations within 12 months as proposed. EPA believes that this timeframe will provide a reasonable amount of time to conduct most investigations, while also ensuring that investigation findings are available relatively quickly in order to assist in preventing future incidents. For very complex incident investigations that cannot be completed within 12 months, EPA is allowing an extension of time if the implementing agency (*i.e.,* EPA and delegated authorities) approves such an extension, in writing. EPA encourages owners and operators to complete incident investigations as soon as practicable and believes that 12 months is typically long enough to complete even complex incident investigations. However, EPA has provided flexibility for facilities to request more time to complete investigations when they consult with their implementing agency and receive written approval for an extension. EPA also re-emphasizes the importance of implementing recommendations as soon as possible after incident investigation completion to prevent future similar incidents.

D. Third-Party Compliance Audits

1. Summary of Proposed Rulemaking

a. Definitions, 40 CFR 68.3

EPA proposed to define ''third-party audit'' to mean a compliance audit conducted pursuant to the requirements of 40 CFR 68.59 and/or 68.80, performed or led by an entity (individual or firm) meeting the competency and independence requirements in those sections.

b. Compliance Audits, 40 CFR 68.58(a) and 68.79(a)

EPA proposed to edit 40 CFR 68.58(a) and 68.79(a) to add the language ''for each covered process'' to compliance audits, self and third-party, to address compliance with the provisions of subpart C or D for each covered process.

EPA also added a sentence at the end of the paragraph to reference when a compliance audit must be a third-party audit.

c. Third-Party Audit Applicability for Compliance Audits, 40 CFR 68.58(f) and 68.79(f)

EPA proposed to add paragraph (f) to 40 CFR 68.58 and 68.79 which identified third-party audit applicability. EPA proposed that the next required compliance audit for an RMP facility would be a third-party audit when one of the following conditions apply:

- Two accidental releases within five years meeting the criteria in 40 CFR 68.42(a), from a covered process have occurred.
- One accidental release within five years meeting the criteria in 40 CFR 68.42(a), from a covered process at a stationary source in NAICS code 324 or 325, located within 1 mile of another stationary source having a process in NAICS code 324 or 325, has occurred.
- An implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of 40 CFR 68.59(c) or 68.80(c).

In addition to the proposed approach for third-party audit applicability, EPA particularly sought comment on the two new conditions modified from the 2017 amendments rule, which applied increased accident severity, frequency, and consequences as a basis for the proposed provision.

d. Third-Party Audit Implementing Agency Notification and Appeals, 40 CFR 68.58(g) and 68.79(g)

EPA proposed to add paragraph (g) to 40 CFR 68.58 and 68.79 which described the procedure when an implementing agency requires a third-party audit and proposed an internal appeals process. EPA proposed to require an implementing agency to provide written notice to the facility owner or operator stating the reasons for the implementing agency's preliminary determination that a third-party audit is necessary. The owner or operator would have an opportunity to respond by providing information to, and consulting with, the implementing agency. The implementing agency would then provide a final determination to the owner or operator. If the final determination requires a third-party audit, the owner or operator would have an opportunity to appeal the final determination. EPA proposed that the implementing agency would provide a written, final decision on the appeal to the owner or operator after considering the appeal.

e. Schedule for Conducting a Third-Party Audit, 40 CFR 68.58(h) and 68.79(h)

EPA proposed to add paragraph (h) to 40 CFR 68.58 and 68.79 which described the schedule for completing third-party audits. For third-party audits required pursuant to paragraph (f)(1) of the section, the proposed language

[97] CCPS 2019. Center for Chemical Process Safety, *Guidelines for Investigating Process Safety Incidents,* 3rd Edition, NY: AIChE.

required the audit and associated report to be completed within 12 months of the second of 2 releases within 5 years. For third-party audits required pursuant to paragraph (f)(2) of the section, the proposed language required the audit and associated report to be completed within 12 months of the release. For third-party audits required pursuant to paragraph (f)(3) of the section, the proposed language required the audit and associated report to be completed within 12 months of the date of the final determination pursuant to paragraph (g)(3) of the section, or if the final determination is appealed pursuant to paragraph (g)(4) of the section, within 12 months of the date of the final decision on the appeal.

f. Third-Party Audits Applicability, 40 CFR 68.59(a) and 68.80(a)

EPA proposed to add 40 CFR 68.59 and 68.80, which included requirements for both third-party audits and third-party auditors. In paragraph (a), EPA proposed that owners or operators engage a third-party to conduct an audit that evaluates compliance with the provisions of subpart C or D (as applicable) when the applicability criteria of 40 CFR 68.58(f) or 68.79(f) are met.

g. Third-Party Auditors and Auditing Teams, 40 CFR 68.59(b) and 68.80(b)

EPA proposed to include paragraph (b) to 40 CFR 68.59 and 68.80 which provides that owners or operators either engage a third-party auditor meeting the competency and independence criteria of paragraph (c) of the section, or assemble an auditing team, led by a third-party auditor meeting the competency and independence criteria of paragraph (c) of the section. The team may include other employees of the third-party auditing firm or other personnel, including facility personnel.

h. Third-Party Auditor Qualifications, 40 CFR 68.59(c) and 68.80(c)

EPA proposed to include paragraph (c) to 40 CFR 68.59 and 68.80 which includes qualifications for third-party auditors and required facility owners and operators to document that the third-party auditor(s) meet the competency and independence requirements. Specifically, EPA proposed that facility owners or operators determine and document that the third-party auditors meet the competency requirements set forth in paragraph (c)(1) and the independence requirements in paragraph (c)(2).

The proposed competency requirements for auditors require third-party auditors to be:

- Knowledgeable with the requirements of 40 CFR part 68.
- Experienced with the facility type and processes being audited and the applicable RAGAGEP; and
- Trained or certified in proper auditing techniques.

The proposed independence requirements that would apply to the third-party auditors require the third-party auditors to:

- Act impartially when performing all activities under this section.
- Receive no financial benefit from the outcome of the audit, apart from payment for the auditing services.
- Ensure that all third-party personnel involved in the audit sign and date a conflict-of-interest statement documenting that they meet the independence criteria of this paragraph.
- Ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. For purposes of this requirement, employment does not include performing or participating in third-party audits pursuant to 40 CFR 68.59 or 68.80.

In paragraph (c)(3), the proposed rule required the auditor to have written policies and procedures to ensure that all personnel comply with the competency and impartiality requirements.

In addition to the proposed approach for third-party auditor qualifications, EPA particularly sought comment on the proposed independence criterion as it is modified from the 2017 amendments rule.

i. Third-Party Auditor Responsibilities, 40 CFR 68.59(d) and 68.80(d)

EPA proposed to include paragraph (d) to 40 CFR 68.59 and 68.80 which includes the responsibilities for third-party auditors. Specifically, EPA proposed that the owner or operator ensure that the third-party auditor:

- Manages the audit and participates in audit initiation, design, implementation, and reporting.
- Determines appropriate roles and responsibilities for the audit team members based on the qualifications of each team member.
- Prepares the audit report and where there is a team, documents the full audit team's views in the final audit report.
- Certifies the final audit report and its contents as meeting the requirements of this section.
- Provides a copy of the audit report to the owner or operator.

j. Third-Party Audit Report, 40 CFR 68.59(e) and 68.80(e)

EPA proposed requirements for the audit report in paragraph (e) of 40 CFR 68.59 and 68.80. Specifically, EPA proposed that the audit report:

- Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For third-party auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of the section are met.
- Describe or incorporate by reference the policies and procedures required under paragraph (c)(3) of the section.
- Document the auditor's evaluation, for each covered process, of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the owner or operator under this rule are adequate and being followed.
- Document the findings of the audit, including any identified compliance or performance deficiencies.
- Summarize any significant revisions (if any) between draft and final versions of the report.
- Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart C of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.

k. Third-Party Audit Findings, 40 CFR 68.59(f) and 68.80(f)

EPA proposed requirements for the audit findings in paragraph (f) of 40 CFR 68.59 and 68.80. EPA proposed in paragraph (f)(1), to require owners or operators, as soon as possible, but no later than 90 days after receiving the final audit report, to determine an appropriate response to each of the findings in the audit report and develop and provide a findings response report. EPA proposed that the findings response report would include:

- A copy of the final audit report.
- An appropriate response to each of the audit report findings.
- A schedule for promptly addressing deficiencies.
- A statement, signed and dated by a senior corporate officer, certifying that appropriate responses to the findings in the audit report have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart C or D of 40 CFR part 68.

EPA proposed in paragraph (f)(2), to require the owner or operator to implement the schedule to address deficiencies identified in the audit findings response report, and document the action taken to address each deficiency, along with the date completed.

Proposed paragraph (f)(3) required the owner or operator to provide a copy of documents required under paragraphs (f)(1) and (2) to the owner or operator's audit committee of the Board of Directors, or other comparable committee, if applicable.

l. Third-Party Audit Recordkeeping, 40 CFR 68.59(g) and 68.80(g)

Finally, in paragraph (g) of 40 CFR 68.59 and 68.80, EPA proposed recordkeeping requirements for the owner or operator regarding third-party audits. The proposal required the owner or operator to retain records at the stationary source, including: the two most recent final third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records. EPA proposed that these requirements would not apply to any documents that are more than five years old.

2. Summary of Final Rule

Based on review of comments, EPA is finalizing the proposed provisions for third-party audits with the following modifications:

- EPA is revising the requirements in paragraph (f) of 40 CFR 68.58 and 68.79 that triggered when a third-party audit would be required. For the final rule, two of the three proposed conditions (*i.e.,* two accidental releases within five years meeting the criteria in 40 CFR 68.42(a), from a covered process have occurred; or one accidental release within five years meeting the criteria in 40 CFR 68.42(a), from a covered process at a stationary source in NAICS code 324 or 325, located within 1 mile of another stationary source having a process in NAICS code 324 or 325, has occurred) are being replaced with one condition—one accidental release meeting the criteria in 40 CFR 68.42(a), from a covered process. The other condition allowing an implementing agency to require a third-party audit is being finalized as proposed.
- EPA is not finalizing compliance audit language at 40 CFR 68.58(a) and 68.79(a) which proposed auditing for every covered process at a facility. This corrects an error in the proposed rulemaking text. By not finalizing this language, compliance audits will remain consistent with the current practice, which allows for representative sampling. A discussion of representative sampling as an acceptable practice for compliance audits can be found in the reconsideration final rule.[98]
- EPA is also not finalizing compliance audit language at 40 CFR 68.58(h) and 68.79(h) which proposed a 12-month timeline for a third-party audit after a triggering criterion. The revised final requirement relies on the language at 40 CFR 68.58(f) and 68.79(f) which refers to the timeline of a third-party audit to be the ''next required compliance audit,'' which is at least every 3 years under 40 CFR 68.58(a) and 68.79(a).

3. Discussion of Comments and Basis for Final Rule Provisions

In the proposed rule, EPA sought comment on several aspects of the Agency's proposed approach for third-party audits. As described in the proposed rule, third-party audits were included in the 2017 amendments rule, and at that time EPA addressed many general comments regarding the inclusion of third-party audits in the RMP rule, including the justification for and legality of, third party audits, and the benefits of third-party audits. This final rule contains some differences from both the 2017 amendments rule and the 2022 SCCAP proposed rule. EPA specifically sought comment on some of the changes, including: the proposed approach for third party audits; the proposed independence criteria, as modified from the 2017 amendments rule; whether the selected auditor should be mutually approved by the owner or operator and employees and their representatives; if direct participation from employees and their representative should be required when a third party conducts an audit; and, whether EPA should require declined findings be included in narrative form, or whether the Agency should provide specific categories of findings for facilities to choose from when reporting. The following discusses EPA's basis for the third-party audit provisions adopted in this final rule.

a. Proposed Approach for Third-Party Audits

Regarding the proposed approach for third-party audits, EPA received comments supporting, opposing, and suggesting improvements to various aspects of the new proposed approach. Numerous commenters expressed support for restoring the third-party auditing requirements of the 2017 amendments rule. One of the commenters noted that third-party auditing helps to ensure a systematic evaluation of the full prevention program for covered processes, while self-auditing may be insufficient to prevent accidents and ensure compliance. Another commenter emphasized that third-party audits will also ensure they are unbiased, compared to self-audits. Many commenters expressed opposition to the third-party audit provision. Some commenters argued that the third-party auditing requirements are unnecessary, would be too burdensome, and could be potentially costly for facilities. Some commenters proposed that the language in the provision should be revised to state that audits should be performed every three years, pointing out an inconsistency in when audits would be required.

Several commenters recommended that the requirement triggering a third-party audit after 2 accidental releases within a 5-year period is not stringent enough, and facilities should be required to conduct a third-party audit after one accidental release or discovery of significant non-compliance. One of the commenters suggested that a 5-year window for accident history is too narrow. A few commenters suggested that third-party audits be required for all RMP facilities without waiting for an incident to occur. Several commenters opposed the 2-accident trigger for third-party compliance audits due to its vague nature that could result in facilities conducting audits when they are not warranted. One of the commenters suggested that EPA narrow the third-party audit trigger from reportable accidents to catastrophic releases. Another commenter noted that accidental releases already trigger incident investigations, including the proposed root cause analysis; therefore, an additional third-party audit will unnecessarily dilute the investigation effort and will be overly burdensome to facilities.

Comments were received regarding the 1-mile audit triggering criteria, mostly in opposition, for various

[98] 84 FR 69834 (69882).

reasons, including that it is too vague and overly broad. Another commenter interpreted this requirement as emphasizing protecting select facilities over protecting the public. One commenter suggested that this requirement could penalize facilities with an otherwise outstanding environmental and safety record because a neighboring facility within one mile does not. One commenter suggested that that the requirement triggering a third-party audit should be required after one accidental release at a facility with a 324 or 325 NAICS code regardless of location to another facility. Another commenter suggested that EPA develop a more user friendly, up-to-date, and accessible method of determining if a facility is within 1 mile of another facility with a 324 or 324 NAICS code to ensure compliance with this provision.

ii. EPA Responses

EPA agrees with the comments in support of the third-party compliance audit requirement to be included in the final rule and believes it is appropriate to require a subset of RMP-regulated facilities to engage competent and independent third-party auditors following the conditions set forth in this final rule after: (1) One accidental release meeting the criteria in 40 CFR 68.42(a) from a covered process at a stationary source has occurred; or (2) an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of 40 CFR 68.80(c). As indicated in the proposal, EPA RMP accident history data show that, while 97 percent of all RMP facilities had no RMP-reportable accidents from 2016–2020, 3 percent of all RMP facilities had at least 1 RMP-reportable accident and 0.5 percent (n = 70) of all RMP facilities had 2 or more RMP-reportable accidents. EPA views one 40 CFR 68.42(a) accidental release as a serious matter, considering the possible outcomes are deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. Further, the average per accident damage estimate from 2016–2020 is $5.5 million. It is arguable that having even one accident should be a cause for concern considering most RMP facilities have never had any accidents. Additionally, of these 70 facilities that had at least 1 RMP-reportable accident, 61 percent (n = 43) had experienced another accident prior to 2016. EPA does not believe affected communities should have to experience the adverse consequences of a second reportable accident before an objective party comes in to evaluate the facility for compliance. The pattern of repeated accidents at RMP facilities provide a reasoned basis for EPA's focus on these facilities to apply a greater level of risk reduction measures.

EPA notes that under 40 CFR part 68, sources with any Program 2 and/or Program 3 processes are already required to conduct compliance audits every three years. This rule does not change the requirement that RMP facilities regularly conduct RMP compliance audits, but adds that, in specific situations, those audits must be performed by a third-party or a team led by a third-party, pursuant to the requirements and schedule in 40 CFR 68.58 and/or 68.79 of the rule. EPA notes that having a third-party conduct a compliance audit does not preclude the facility from conducting an in-house compliance audit in tandem. If the goal is to ensure that preventative measures are in place to prevent future accidents, EPA hopes that a facility would want to implement all such measures to ensure it is compliant. EPA disagrees that the third-party audit requirement should be expanded to include, as some commenters suggested, all RMP facilities without waiting for an accident. While independent third-party audits help to ensure an independent systematic evaluation of the full prevention program at an RMP facility, EPA is not making this a regulatory requirement for all RMP sources before an accident, at this time, due to the increased burden associated with these audits.

EPA acknowledges the costs associated with third-party audit requirements. Although this final rule requires a larger group of stationary sources to conduct third-party audits than the proposal, the costs are justified. The Agency believes the affected group of stationary sources are sources that will benefit from an independent objective audit of their compliance with prevention program requirements, as they have already had one RMP-reportable accidental release. As described in the proposed rule, EPA recognizes that a relatively small number of RMP-regulated facilities have had RMP-reportable accidents. EPA continues to be concerned with these RMP facilities that—despite current RMP regulations, enforcement, and lessons learned from previous accidents—continue to have accidents and, in some cases, multiple accidents, thereby continuing to put nearby communities at risk. Sources that have had one accident are substantially more likely to have another accident than the general population of RMP-regulated sources. EPA is concerned that those facilities may not have been able to identify measures on their own (through incident investigations, hazard evaluations, and compliance self-audits) to properly evaluate and apply appropriate prevention program measures to stop accident releases from occurring. Considering the goal of the RMP regulations is to prevent accidental releases, EPA believes that the increased cost of third-party compliance audits at such facilities is therefore justified.

In response to comments on when third-party audits are required, EPA is clarifying and finalizing that, whichever criteria triggers the requirement, a third-party need only be engaged for the next required compliance audit(s), which is no later than 3 years from the previous compliance audit. The revised final requirement relies on the language at 40 CFR 68.58(f) and 68.79(f) which refer to the timeline of a third-party compliance audit to be the ''next required compliance audit,'' which is at least every 3 years under 40 CFR 68.58(a) and 68.79(a). For example, if a facility conducted an internal compliance audit in August 2024 and had an RMP-reportable accident in October 2024, the next compliance audit, required by August 2027, would be a third-party audit. EPA believes this approach is appropriate because it will allow the source to remain within their already required scheduled timing for audits. Further, when an accident occurs, the source will be required to conduct an RCA within 12 months; the 3-year finalized timeframe for the audit will give the source flexibility to accomplish both within their compliance due dates. If the third-party audit is completed after the RCA, it will give the source an additional opportunity to uncover deficiencies that led to the accident. In other words, the third-party audit will be a follow-up to review the RCA and ensure all practices to prevent an accident have been resolved.

The third-party audit provision is intended to reduce the risk of future accidental releases by requiring an objective auditing process to assist owners and operators in determining whether facility procedures and practices comply with subparts C and/or D of the RMP rule (*i.e.,* the prevention program requirements), are adequate, and are being followed. Thus, EPA is finalizing requirements for third-party audits under 40 CFR 68.58 and 68.79 to require that owners and operators

ensure that third-party auditors meet qualification criteria, that audits are conducted and documented, and that findings are addressed pursuant to the requirements of 40 CFR 68.59 and 68.80, as applicable.

b. Proposed Independence Criteria

In the preamble to the 2022 SCCAP proposed rule, EPA sought comment on the proposed independence requirements modified from the 2017 amendments rule. The modification was to remove the following auditor independence requirements contained in 40 CFR 68.59 and 68.80(c)(2)(iii) and (iv) to allow more flexibility in choosing auditors:

- Auditors cannot have conducted past research, development, design, construction services, or consulting for the owner or operator within the last 2 years.
- Auditors cannot provide other business or consulting services to the owner or operator, including advice or assistance to implement the findings or recommendations of an audit report, for a period of at least 2 years following submission of the final audit report.

i. Comments

Many of the comments received regarding independence requirements did not address the change, which removed these two requirements. As with the 2017 amendments rule, EPA has received comments generally in support of the proposed independence requirements, and some generally opposed to the independence requirements. Such general comments were previously addressed by EPA during the 2017 rulemaking.[99]

However, EPA did receive some comments specifically regarding this proposal to remove these two independence requirements, generally in support of removing these requirements. One commenter supported removing these requirements, describing them as unrealistic and unworkable, and another commenter described them as onerous and unnecessary. This commenter further stated that these requirements would have resulted in an insufficient pool of qualified auditors, harmed the quality of audits, and significantly driven up costs. However, another commenter requested that EPA reconsider the proposal to remove the proposed auditor independence requirements, stating that auditor independence is of paramount importance.

ii. EPA Responses

EPA is finalizing the proposed independence requirements and believes this is an important and necessary aspect of third-party audits. EPA notes that these independence requirements were simplified and streamlined from the 2017 rule, which included a limitation for auditors who conducted consulting type services for the owner or operator within the last two years, or for a period of at least 2 years following the audit report. EPA believes the provision, as adopted, ensures additional available independent auditors to act in an independent and impartial manner, allowing more flexibility in choosing auditors.

c. Employee Participation

In the preamble to the proposed rule, EPA sought comment on whether the selected auditor should be mutually approved by the owner or operator and employees and their representatives, and if direct participation from employees and their representative should be required when a third party conducts an audit.

i. Comments

EPA received comments in support and in opposition to these provisions. One commenter supported the provision that the selection of a third-party auditor be mutually approved by the owner or operator and employee representatives and suggested that employees and their representatives be involved in all stages of the audit. However, several commenters expressed opposition to a requirement that the selected auditor be mutually approved by the owner/operator, employees, and employee representatives. One commenter noting that this requirement would increase the time needed to vet and approve auditors, causing unnecessary delays. Another commenter suggested that the auditor be selected by facility management and that bringing unknowledgeable employees into the decision-making process would be burdensome and will not improve compliance.

ii. EPA Responses

While EPA encourages sources to include employee participation during third-party audits, EPA is not finalizing a provision that requires employee participation in third-party audits at this time. The Agency expects the enhancements to employee participation required by this rule will motivate owners and operators to recognize the benefit of involving their employees and their representatives in all aspects of the process safety management at their facility.

d. Format of Declined Third-Party Compliance Audit Findings

i. Comments

EPA has received comments in support of, and in opposition to, requiring declined findings to be included in narrative form. One comment in support argued that more detailed information on the recommendations and decisions are needed to ensure that a facility does not avoid implementing necessary or practical recommendations. Another commenter noted that the suggested categories would fall short of capturing the reasons to decline an audit recommendation, such as a recommendation that is impractical or ineffective.

Several commenters expressed opposition to requiring facilities to provide declined findings in narrative form in the RMP. Several commenters noted that this requirement would be overly burdensome. Several commenters raised concerns that the public release of this information would be confusing to those that are not knowledgeable about a facility's processes. Some commenters noted that public pressure may result in difficult technical debates about unfounded findings or cause facilities to address findings they disagree with. Another commenter recommended that the justification for declined findings should be consistent with the criteria outlined by OSHA's 1994 Compliance Directive, asserting that this would make a narrative text in the RMP repetitive. One commenter noted concerns about releasing information to local responders, who may lack the expertise in chemical processes, could result in incorrect response activities during an accidental release. A couple of commenters suggested that this requirement would discourage facility leaders from encouraging audit teams to identify potential hazards to limit the information that must be reported to EPA. The commenters also suggested that audit findings are already readily available to EPA. Several commenters requested that EPA not mandate that facilities make declined findings publicly available online due to security concerns of releasing highly sensitive information.

[99] Response to Comments on the 2016 Proposed Rule Amending EPA's Risk Management Program Regulations; *https://www.epa.gov/sites/default/files/2016-12/documents/rmp_rtc_compiled_12-21-16.pdf.*

ii. EPA Responses

In the final rule, EPA is requiring facilities to choose from categories, similar to those in OSHA's 1994 Compliance Directive, as the Agency believes it will ease the use and general consistency for facilities to report and communities to review declined third-party audit recommendations. This format will also help EPA administer and track how facilities choose to comply with this provision.

e. Reporting Requirements

A commenter suggested that EPA ensure that the reporting requirements for Program 3 facilities match those for Program 2 facilities, noting that 40 CFR 68.175(k) is missing the key language in proposed 40 CFR 68.170(i): ''and findings declined from third-party compliance audits and justifications.''

EPA notes that this was an error, and this has been corrected in the final rule.

E. Employee Participation

1. Summary of Proposed Rulemaking

a. Recommendation Decisions, 40 CFR 68.83(c)

EPA proposed to revise 40 CFR 68.83, which is applicable to Program 3 processes, by adding an additional provision, paragraph (c), to the written employee participation plan of action. Proposed paragraph (c) would require the owner or operator to consult with employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations and findings of PHAs under 40 CFR 68.67(e), compliance audits under 40 CFR 68.79(d), and incident investigations under 40 CFR 68.81(e).

b. Stop Work Authority, 40 CFR 68.83(d)

EPA proposed to revise 40 CFR 68.83, which is applicable to Program 3 processes, by adding an additional provision, paragraph (d), to the written employee participation plan of action. Proposed paragraph (d) would require the owner or operator to provide the following authorities to employees and their representatives, and to document and respond in writing, within 30 days of the authority being exercised:

- Refuse to perform a task when doing so could reasonably result in a catastrophic release.
- Recommend to the operator in charge of a unit that an operation or process be partially or completely shut down, in accordance with procedures established in 40 CFR 68.69(a), based on the potential for a catastrophic release.
- Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in 40 CFR 68.69(a), based on the potential for a catastrophic release.

c. Accident and Noncompliance Reporting, 40 CFR 68.62, 68.83(e)

EPA proposed to add 40 CFR 68.62, which is applicable to Program 2 processes, to require the owner or operator to:

- Develop a written plan of action regarding the implementation of the employee participation requirements.
- Develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other noncompliance.
- Provide employees and their representatives access to hazard reviews and to all other information required to be developed under this rule.

EPA proposed to revise 40 CFR 68.83, which is applicable to Program 3 processes, by adding an additional provision, paragraph (e), to the written employee participation plan of action. Proposed paragraph (e) would require the owner or operator to develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other noncompliance.

In addition to the proposed approach to accident and noncompliance reporting, EPA solicited comment on whether owners and operators should: (1) Distribute an annual written or electronic notice to employees that employee participation plans and other RMP information is readily accessible upon request; (2) provide training for those plans; and (3) provide training on how to access the information.

2. Summary of Final Rule

EPA is finalizing the proposed provisions for employee participation with the following modifications:

- Revising 40 CFR 68.83(c) to specifically apply only to those employees knowledgeable in the process.
- Removing from 40 CFR 68.83(d) the stop work criterion allowing an employee to refuse to perform a task when doing so could reasonably result in a catastrophic release.
- Revising 40 CFR 68.83(d) so that the two remaining stop work criteria specifically apply only to those employees knowledgeable in the process.
- Removing from 40 CFR 68.83(d) the requirement to document and respond in writing within 30 days of the stop work authority being exercised.
- Revising 40 CFR 68.62(b) and 68.83(e) to allow the person reporting an unaddressed hazard, unreported accident, or noncompliance to decide whether or not they wish to make an anonymous report or attribute their identity to the report.
- Revising 40 CFR 68.62(b) and 68.83(e) to specify the methods of making a report to the owner and operator and EPA.
- Adding a provision to 40 CFR 68.62(b) and 68.83(e) to require the owner or operator to keep a written record of the report of noncompliance.
- Adding a provision to 40 CFR 68.62(a)(1) and 68.83(a)(1) for the owner or operator to provide an annual written or electronic notice to employees indicating RMP information is available.
- Adding a provision to 40 CFR 68.62(a)(2) and 68.83(a)(2) requiring the owner or operator to provide training on the written employee participation plan.
- Revising 40 CFR 68.62(a) and 68.83(a) to add the word ''requirements'' as a clarifying edit.

3. Discussion of Comments and Basis for Final Rule Provisions

a. Recommendation Decisions, 40 CFR 68.83(c)

i. Comments

Many commenters expressed support for the proposed requirement in 40 CFR 68.83(c) for the owner or operator to consult with employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations and findings of PHAs, compliance audits, and incident investigations as a way of promoting collaboration between employees and management representatives. One State agency remarked that the goal of the provision is to ensure the team remains effective and is reflective of diverse viewpoints and backgrounds. However, other commenters opposed the provision, stating that transferring decision-making authority to employees presents additional legal issues in terms of employee responsibility and accountability, such as in the event an incident occurs, is investigated, and results in disciplinary action or legal liability. Another commenter noted that EPA's use of ''employees and their representatives'' can be viewed too broadly.

ii. EPA Responses

EPA disagrees that this provision presents additional legal issues. This provision does not transfer decision-making responsibility to employees and their representatives. The provision also does not attempt to shift ultimate accountability to the employee for decisions that the owner or operator is responsible for. For example, at 40 CFR 68.67(e), the PHA provision indicates *the owner or operator* shall establish a system to promptly address the team's findings and recommendations, to assure that the recommendations are resolved in a timely manner, and that the resolutions are documented. Despite this provision, the regulated entity remains the owner or operator of the stationary source. The requirement to consult with employees and their representatives does not make employees the decision-making authority. This provision does, however, provide for consultation that gives employees the opportunity to provide their input and perspective, based on their firsthand knowledge of specific process safety concerns, before final decisions are made regarding whether to implement recommended process safety solutions. This provision helps ensure that a well-informed approach is applied when finalizing resolutions for reducing hazards and mitigating process safety risks.

In response to the comment that the term ''employees and their representatives'' can be viewed too broadly, EPA has amended the language to specify that the provision only applies to employees knowledgeable in the process and their representatives. EPA expects employees involved in the consultation to be knowledgeable in the process, as these employees are expected to have a better firsthand understanding of the process than employees who do not work in the process, who are new to the process, or who do not understand the process. EPA expects that these employees are likely to also be the employees that have the qualifications to participate as a team member when developing recommendations from incident investigations under 40 CFR 68.81(c), compliance audits under 40 CFR 68.79(b), and PHAs under 40 CFR 68.67(d). At 40 CFR 68.67(d), the PHA provision indicates that the PHA shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. EPA believes it is prudent to apply at least the same qualification criterion to employees who can participate in developing recommendations as to those who can assist in deciding whether those recommendations will be implemented.

After review of the comments, the Agency continues to believe that involving directly affected employees and their representatives in recommendation discussions and decisions will help ensure that the most effective recommendations for reducing hazards and mitigating risks to employees and the public are given the proper consideration. EPA is finalizing the proposed provision with the modification, for clarity, that those employees who are to be consulted on addressing, correcting, resolving, documenting, and implementing the recommendations and findings of PHAs, compliance audits, and incident investigations must be those knowledgeable in the process.

b. Stop Work Authority, 40 CFR 68.83(d)

i. Comments

Several commenters supported the proposed stop work authority provision of the employee participation plan under 40 CFR 68.83(d). One Federal agency indicated that any program that does not appropriately enable workers to freely exercise stop work authority in necessary circumstances would allow risks to occur and accumulate. Some commenters supported the provision in principle but recommended modifications. A couple of commenters recommended removing the 30-day response period arguing that it should not be necessary when the authority is primarily used in imminently dangerous situations. A few commenters asserted that EPA should also require prompt reports of all stop-work authority usage so that EPA and the public are made aware and can evaluate whether additional quick action is needed to support the workers, assure compliance, and save lives.

Some commenters did not support the proposed stop work authority provision of the employee participation plan. One commenter noted that having uniform requirements and procedures for an operation shutdown ignores the diverse array of regulated facilities in terms of industry and process. The commenter asserted that EPA should allow for operational flexibility in recognition of these circumstances and emphasized the risk an abrupt shutdown of complex chemical processes would pose. Another commenter asserted that the underlying intent of the provision can be better addressed by establishing clear written guidelines on how employees can raise such concerns in ''real time.'' Several commenters claimed that the stop work authority could result in increased safety risks, indicating the potential for employees to lack adequate knowledge or training to make such a decision. The commenters expressed further concern that the frequency of transient operations could increase, and that more unplanned or abrupt shutdowns could occur, which are often dangerous. A few of the commenters noted that giving this authority to all employees would leave facilities more susceptible to RMP incidents occurring and make the processes at RMP-covered facilities less safe.

A couple of commenters opposed the provision and noted that the language in the stop work authority provision would be too general, inevitably allowing every RMP covered process to be shut down by an employee. The commenters noted that this does not align with EPA's stated purpose of the RMP rule, which is to improve safety at facilities. One State agency expressed concerns about and opposed the provision allowing employees to refuse to perform a task when they believe doing so could reasonably result in a catastrophic failure. The commenter further stated that it is extremely important that any stop work authority be implemented in a manner that minimizes the chance for adverse unintended consequences.

ii. EPA Responses

The proposed stop work provision within the employee participation section of this final rule is intended only to include the stop work authorities, established by the operating procedure provisions under 40 CFR 68.69(a), into the written employee participation plan. This provision is not intended to create new authorities or require additional components to those already developed. The final rule conforms the amendments to this intent. Therefore, while EPA believes that it is useful to evaluate any stop work authority exercised, EPA expects these internal evaluations to already be occurring in the owner or operator's annual review of operating procedures, through training activities, or when conducting compliance audits. The final rule does not add a provision to require evaluations be included in the written plan. Additionally, EPA agrees that stop work authorities are expected to be carried out in imminently dangerous situations such that a 30-day response to an authority being exercised long after the threat has passed may not be practical. Regarding providing reports of stop work to EPA, the Agency disagrees

that this is necessary because stop work should be exercised to prevent imminently dangerous situations from resulting in catastrophic releases and therefore should not be contingent on or require quick action by outside parties. Furthermore, the Agency does not have the capability or resources to immediately respond to all instances of stop work being exercised. If, for some reason, quick action by outside parties was needed, EPA believes that the emergency response plans required by the rule should already outline a plan for responding to dangerous situations by the facility and/or local responders as they will be the most familiar with the source's processes and hazards.

The proposed rule provided an extensive discussion of the stop work authority that is already inherent in the current RMP rule.[100] As the proposed rule explained, the current RMP rule already addresses many aspects of a stop work authority that provides means for employees to identify and resolve imminent operational risks before they occur. Operating procedures, maintenance/mechanical integrity, and their associated training requirements, which are already mandatory under the rule, create a stop work authority as they address the circumstances and procedures to identify unsafe operations. EPA believes each facility's individual operating procedures and approach to correcting equipment deficiencies give owners and operators the flexibility to design a stop work authority for their process operations that remains adaptable to the procedures already in place. Therefore, EPA disagrees with the comments that a stop work authority documented in the employee participation plan would cause more shutdowns and possibly more accidents, as the authority that is being provided by the final rule's provisions leverages existing operating procedure and maintenance requirements. In reference to the comment citing the potential for an increase in safety risks when an employee lacks adequate knowledge to make a stop work decision, EPA has amended the provision to specify that this authority should be exercised only by employees knowledgeable in the process and their representatives.

EPA disagrees that the new stop work authority provision does not align with the purpose of the RMP rule. Under the existing RMP rule, operating procedures are designed for, and assigned to, employees who will be trained on performing the tasks described, thereby producing employees knowledgeable in the process they are working in. However, because of the significant disruption to process operations that can occur when stop work authority is exercised, EPA agrees that it is useful to explicitly state that these authorities are applicable only to employees who are knowledgeable in the process. Further, EPA believes a work culture that promotes process safety allows for opportunities for employees to refuse to perform work. In a scenario where there is a potential for a catastrophic release, EPA believes it is important to take further steps to shutdown a process to prevent an accident. Rather than refusing to perform work only, steps necessary to shut down the process should be set in motion. Therefore, the Agency is deleting the change noted below from 40 CFR 68.83(d) to ensure that potentially imminent catastrophic releases are followed through with properly. The basis for including stop work authorities in the employee participation plan is to enhance authorities already provided to employees under the rule.

After review of comments, EPA maintains that it is important to ensure facilities' employees have authorities to manage unsafe work as they are one of the last lines of defense to protect human health and the environment from a catastrophic release. EPA, however, does agree with some recommendations offered in the comments to enhance the provision. Therefore, EPA is finalizing the proposed provision with the following modifications as discussed above:

- Removing from 40 CFR 68.83(d) the requirement to document and respond in writing within 30 days of the stop work authority being exercised.
- Removing from 40 CFR 68.83(d) the stop work criterion allowing an employee to refuse to perform a task when doing so could reasonably result in a catastrophic release.
- Revising 40 CFR 68.83(d) so that the two remaining stop work criteria specifically apply to those employees knowledgeable in the process and their representatives.

c. Accident and Non-Compliance Reporting, 40 CFR 68.62(b) and 68.83(e)

i. Comments

EPA received comments supporting, opposing, and suggesting improvements to the accident and non-compliance reporting provision. One commenter supported EPA's proposal to require an anonymous reporting mechanism. The commenter stated that owners and operators should be required to make all employee participation plans and RMPs accessible and also should be required to provide annual training, at minimum, to facility employees. One of the labor commenters who supported the provision in principle also expressed concern that the language proposed does not adequately specify what the reporting process should be. The commenter also stated that the provision is of limited value since an employee could report anonymously without a formal process. The commenter likewise stated that the provision is restrictive since, as written, the requirement excludes reporting in situations where the reporter does not wish to remain anonymous. Although a couple of commenters agreed that it is important that employees can voice concern without fear of repercussions, these commenters stated that anonymous reports require someone to judge the validity of the report. Some of the industry commenters also stated that anonymous reports could create a burden. The commenters expressed further concern that, for example, reports could be filed by misinformed persons, thus necessitating the development of methods and time frames to determine the credibility of reports as well as when appropriate action should be taken. One of the commenters stated that a better approach is to allow RMP-regulated entities to continue efforts to improve safety cultures, strengthen safety teams, and foster employee communication in lieu of expending resources on anonymous reporting features.

ii. EPA Responses

EPA does not expect to see a ''one-size fits-all'' plan developed by sources for reporting areas of non-compliance. Some RMP facilities are less complex, operating with a handful of employees, while other RMP facilities have very complex processes that involve hundreds of employees. Like other provisions of the RMP regulation, the employee participation provisions allow facility owners and operators the flexibility to exercise reasonable judgement in determining how to best engage their employees and make them aware of their facility's efforts to apply the RMP rule to process operations. In the absence of a more specific performance standard like RAGAGEP or a specific direction, the RMP rule relies on the reasonable judgments and efforts of regulated entities in designing compliance programs that are aimed at preventing or mitigating accidental releases. EPA agrees with commenters that it is useful for individual RMP facility owners and operators to continually improve their efforts to

[100] 87 FR 53591.

enhance safety cultures, strengthen safety teams, and foster employee communication. EPA also agrees that the most effective programs probably already comply with most aspects of the provision. EPA believes that sources should create a welcoming atmosphere for employees to discuss safety concerns internally. However, commenters, particularly commenters from labor organizations who supported the provision, stated that this is not always the case. Therefore, EPA maintains that this provision is necessary to establish a minimum standard for conduct. To ensure a consistent understanding of EPA's expectations for this provision, modifications to the provision are discussed below.

To clarify EPA's intent in the proposal, EPA is specifically defining in this final rule that the process developed to report noncompliance must detail how to report to the owner or operator and/or EPA. It is understandable that in some instances employees will feel more comfortable reporting to one or the other entity (or both), which will be up to the reporter, but the details provided in the plan should provide clear instructions for how to report to both entities. Reporting areas of non-compliance to the owner or operator allows employers to become aware of areas of concern and/or opportunities to improve process safety. It is expected that validating reports will not impose a heavy burden on the owner or operator as they should already be familiar with their level of compliance with the rule through regular compliance monitoring activities, such as triennial compliance audits. While EPA is not prescribing details of how a facility needs to follow-up with the report, the owner or operator will be required to at least maintain a record of the report. EPA believes it is in the owner or operator's best interest for the necessary follow-up to address employees' process safety concerns and/or areas where the owner or operator may have fallen short on compliance with the rule. When an employer is engaged first and does not resolve an issue, it is expected that the next step for reporting noncompliance will be to report to EPA. Reporting areas of non-compliance to EPA [101] will allow the Agency's Office of Enforcement and Compliance Assurance to determine the validity of the report received through appropriate levels of follow-up, investigation, and enforcement, if necessary.

Regarding anonymous reporting, EPA recognizes both the concern for anonymity and the desire from employees wanting to identify themselves as the reporter. EPA believes this option to remain anonymous or not will be particularly useful if there are additional follow-up steps that the reporter and or the owner/operator must take in order to resolve an issue.

Regarding the concern that reporting could create a burden or be performed by misinformed employees, EPA notes that the current Program 3 employee participation provisions under 40 CFR 68.83 already provide employees access to all RMP-related information. The new requirement for Program 2 processes under 40 CFR 68.62(c) will allow this as well. However, EPA is concerned that some sources may provide RMP-related information to their employees without providing details or explanations of the information. EPA agrees with comments stating that workers without required information and training may be unaware of their opportunities and authorities to participate in hazard prevention, and that the lack of worker understanding will inevitably lead to less participation. Therefore, to ensure that employees are regularly reminded that RMP information is available to them, owners and operators of all Program 2 and Program 3 processes will be required to provide an annual written or electronic notice to employees indicating that RMP information is available.

The Agency also believes that management, employees, and their representatives involved in the process could benefit from training on employee participation plans to ensure these facility stakeholders are aware of the information included in the plans or otherwise available. A more thorough understanding through the training may help reduce unvalidated non-compliance reports, some of which commenters indicated could become a concern associated with this noncompliance reporting provision. Ultimately EPA expects training on employee participation plans will help employees identify, and owners and operators correct, issues that may prevent and mitigate accidents.

After review of EPA's preferred approach, options, and comments, the Agency maintains that workers can play an important role in promoting process safety through reporting noncompliance. EPA, however, does agree with some recommendations offered in the comments to enhance the clarity of the provision. Therefore, EPA is finalizing the proposed provision with the following modifications as previously discussed:

- Revising 40 CFR 68.62(b) and 68.83(e) to specify the report methods to either or both the owner and operator and EPA.
- Revising 40 CFR 68.62(b) and 68.83(e) to let anonymity be decided by the reporter.
- Adding a provision to 40 CFR 68.62(b) and 68.83(e) to require the owner or operator to keep a written record of the report of noncompliance.
- Adding a provision to 40 CFR 68.62(a)(1) and 68.83(a)(1) for the owner or operator to provide an annual written or electronic notice to employees indicating RMP information is available.
- Adding a provision to 40 CFR 68.62(a)(2) and 68.83(a)(2) for training on the written employee participation plan.

VI. Emergency Response

A. Summary of Proposed Rulemaking

1. Community Emergency Response Plan Amplifications, 40 CFR 68.90(b), 68.95(c)

EPA proposed to revise 40 CFR 68.90(b)(1) and 68.95(c), which are applicable to non-responding and responding facilities respectively, to detail the required elements of the EPCRA community emergency response plan in RMP regulatory text. The proposed RMP regulatory text indicated that the EPCRA community emergency response plan should include: (1) Identification of facilities within the emergency planning district; (2) identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances (EHS); (3) identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities, such as hospitals or natural gas facilities; (4) methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances; (5) designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan; (6) procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred; (7) methods for determining the occurrence of a release, and the area or population likely to be affected by such release; (8) description of

[101] Some EPA resources to report RMP non-compliance include: *https://echo.epa.gov/report-environmental-violations, https://www.epa.gov/rmp/epa-regional-rmp-contacts.*

emergency equipment and facilities in the community and at each facility in the community, as well as an identification of the persons responsible for such equipment and facilities; (9) evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes; (10) training programs, including schedules for training of local emergency response and medical personnel; and (11) methods and schedules for exercising the emergency plan. The proposed revisions also included that upon request of the LEPC or emergency response officials, the owner or operator would be required to promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

2. Community Notification of RMP Accidents, 40 CFR 68.90(b), 68.95(a), (c)

EPA proposed to revise and add provisions to 40 CFR 68.90(b), paragraphs (b)(3) and (6) respectively, pertaining to non-responding facility designation qualifications. Revised proposed paragraph (b)(3) would have required the owner or operator to provide to emergency responders timely data and information detailing the current understanding and best estimates of the nature of a release when there is a need for a response. Proposed paragraph (b)(6) would require the owner or operator to maintain and implement, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases of RMP-regulated substances. Proposed paragraph (b)(6) would additionally require the owner or operator to ensure that a community notification system is in place to warn the public within the area potentially threatened by the release.

EPA proposed to revise 40 CFR 68.95, which is applicable to responding facilities, by revising paragraphs (a)(1)(i) and (c). Revised proposed paragraph (a)(1)(i) would have required the owner or operator to include in the procedures for informing the public about releases, assurance that a community notification system is in place to warn the public within the area threatened by the release. Revised proposed paragraph (c) would additionally require the emergency response plan to include providing timely data and information detailing the current understanding and best estimates of the nature of the release when a release occurs.

3. Emergency Response Exercise Program, 40 CFR 68.96(b)

EPA proposed to revise 40 CFR 68.96, which is applicable to responding facilities, by revising the frequency requirement for field exercises under paragraph (b)(1)(i) and the documentation requirements for field and tabletop exercises under paragraph (b)(3). Proposed paragraph (b)(1)(i) would require the owner or operator to conduct a field exercise at least once every 10 years unless the appropriate Federal, State, and local emergency response agencies agree in writing that such frequency is impractical. If emergency response agencies agree, the owner or operator shall consult with emergency response officials to establish an alternate appropriate frequency for field exercises. Proposed paragraph (b)(3) would require the field and tabletop exercise reports to include a description of the exercise scenario, names and organizations of each participant, an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.

B. Summary of Final Rule

EPA is not finalizing the proposed community emergency response plan amplifications at 40 CFR 68.90(b)(1) and 68.95(c).

EPA is finalizing the proposed provisions for community notification of RMP accidents and the emergency response exercise program with the following modifications:

- Revising 40 CFR 68.90(b)(3) and 68.95(c) to allow other existing notification mechanisms or regulations that satisfy the notification requirements, if applicable.
- Revising 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to specify that the owner or operator should *partner* with local response agencies to ensure a community notification system is in place, and to document the collaboration.
- Removing from 40 CFR 68.96(b)(1)(i) the requirement that Federal and State agencies require consultation when determining a field exercise frequency less than once every 10 years.
- Revising 40 CFR 68.95(a)(1)(i) to add the word ''potentially'' as a clarifying edit.

C. Discussion of Comments

1. Community Emergency Response Plan Amplifications, 40 CFR 68.90(b), 68.95(c)

a. Comments

EPA received comments supporting and opposing the proposal to revise 40 CFR 68.90(b)(1) and 68.95(c) to detail the required elements of the EPCRA community response plan in RMP regulatory text. Some commenters in support of the amplifications indicated that it is important to reaffirm and ensure coordination with the EPCRA emergency response planning teams. Another commenter mentioned that the use of ''should'' in the community response plan renders the entire section as voluntary while the commenter suggested that the section should instead be required. Some commenters stated that EPA should not expand the regulatory language. One commenter expressed concern that it is not reasonable to expect facilities to ensure that plans include the features in proposed 40 CFR 68.90(b). The same commenter also asked for greater clarity over the use of the word ''should,'' rather than ''must.'' One commenter noted that it is inappropriate for EPA to put the responsibility of the community plan on the RMP facility. Some commenters expressed confusion over the requirement that RMP facilities assume responsibility for an emergency plan only if the LEPC's current plan is inadequate. These commenters further explained that this places the burden of being held accountable on the RMP facility for the adequacy of a plan that they have no control over.

b. EPA Responses

EPA notes that the modification to 40 CFR 68.90(b)(1) and 68.95(c) in the proposed rule was intended only to include details of EPCRA's community emergency response plan requirements into RMP regulatory text for reference, not to ultimately transfer plan development and implementation responsibility to RMP facilities. Rather, EPA's goal was to make it simpler for RMP-regulated facilities to be knowledgeable about the components of the community emergency response plan to ensure that they understand how their facility's processes could impact the larger community emergency response plan and understand the facility's role in coordination of the required plan provisions. While this proposed modification did not include a new regulatory requirement, EPA acknowledges the confusion expressed by including EPCRA requirements in

the RMP regulatory text. Therefore, after reviewing the comments, the Agency has decided not to finalize this proposed regulatory text modification. EPA notes that 40 CFR 68.90(b)(1) and 68.95(c) will continue to reference the statutory citation for the EPCRA community response plan, 42 U.S.C. 11003. EPA encourages owners and operators to be familiar with all the elements of the community emergency response plan to effectively consider the potential impacts of a chemical release from their facility on the community.

2. Community Notification of RMP Accidents, 40 CFR 68.90(b), 68.95(a), (c)

Providing Timely Data to First Responders

a. Comments

Some commenters supported the proposed provision for facility owners and operators to provide timely release data to local first responders when there is a need for such response. One commenter in support indicated that, while it is true that LEPCs and local first responders can utilize tools to perform analyses outside the fence line, the facility's own first-hand information will improve this process and increase first responder awareness and safety during a response. Some supporters also offered modifications to the provision. One commenter suggested that EPA require a follow-up notice of the actual final release information in the short-term in addition to the public meeting requirement. Similarly, another commenter pointed out that real-time air quality data should be made available to the public and not just select officials. Some commenters did not support the proposed provision. A few commenters stated that the requirement to provide ''necessary entities'' with ''accurate and timely data'' is duplicative and vague. These commenters urged EPA to remove this provision. Commenters added that facilities are already required to notify and provide information of certain releases to the National Response Center (NRC), State Emergency Response Commissions (SERCs), and LEPCs under EPCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

b. EPA Responses

EPA disagrees that the provision is duplicative and vague. EPA believes that the provision offers the appropriate level of flexibility that may be needed during accidental release events. As stated in the proposal, the expectation for this provision is for owners and operators to provide initial information about their release to local responders as soon as possible, and to provide more accurate data or correct erroneous data that had been previously relayed when new information is available. EPA acknowledges that the time to gather and update release information can vary widely depending on the circumstances, extent and consequences of the release, and the status of individuals conducting the investigation during the accident. EPA also acknowledges that local responders may be different entities (*e.g.,* fire department, Hazmat team, police, etc.) depending on the community. The initial and follow-up information required by this provision will help facilitate proper communication among responders and the facility to ensure the appropriate type and level of response is provided during a release.

While EPA encourages follow-up communication with local responders and the public after conclusion of response activities, EPA does not believe that an interim written follow-up-notice of the actual final release information should be required after the response ends. EPA believes that the public meeting requirement at 40 CFR 68.210 and the five-year accident history requirement at 40 CFR 68.42 provide adequate time for the facility to gather and finalize information to share with the public. The Agency notes that sources are required to update their accident histories in their RMPs within 6 months of an RMP-reportable accident (40 CFR 68.195(a)). Additionally, many States separately require follow-up release reporting within a short time after response activities are concluded (*e.g.,* 30 days), and this information may be publicly available.

Regarding providing real time air quality data to the public, EPA acknowledges the need to consider expanding fenceline monitoring requirements for RMP-regulated facilities to provide real time data to local responders and the public. EPA took comment on this in the proposal and is reviewing the comments received in consideration for a future rulemaking.

In response to the comment that facilities are already required to notify and provide information about imminent releases to the NRC, SERCs, and LEPCs under CERCLA and EPCRA, EPA has amended the language in the final rule to allow existing release notification requirements to satisfy this provision, if applicable. EPA acknowledges that EPCRA section 304, CERCLA section 103, and the CSB have similar Federal reporting requirements, and that there may also be State-only requirements for release notification and reporting that could meet this requirement. Therefore, EPA believes the amendment to this provision can help prevent any undue burden in complying with multiple requirements when a chemical release occurs. EPA believes this provision is particularly useful in closing regulatory gaps for chemical release notification where other statutory requirements do not apply. For example, reporting under EPCRA section 304 is required only to the SERC and LEPC, and reporting under CERCLA section 103 is required only to the NRC. Additionally, not all RMP regulated substances are EPCRA extremely hazardous substances and/or CERCLA hazardous substances (*e.g.,* propane, butane, pentane, and hydrogen are regulated under RMP, but not under EPCRA section 304 or CERCLA section 103); thus, while there might be some overlap, some chemicals will require only Federal release reporting under RMP.

After review of comments, EPA maintains that the requirement to provide timely release data to responders in the case of an accidental release will help ensure that local responders have sufficient information to make the best decision on whether community notification is appropriate. Furthermore, EPA does agree with the recommendation offered in the comments to prevent undue burden in complying with multiple requirements when a chemical release occurs. EPA is therefore finalizing the proposed provision with the following modification as previously discussed—revising the proposed provisions for 40 CFR 68.90(b)(3) and 68.95(c) to allow existing notification mechanisms or regulations to satisfy the RMP release notification requirements if applicable.

Ensure a Community Notification System is in Place

a. Comments

Some commenters supported the provision that facilities ensure a community notification system is in place. One commenter explained that current notification procedures are inadequate, with some community members not learning about a release until hours afterward. One commenter noted that while they support the presence of State and/or local alerting authorities, EPA should consider that this notification system may not be appropriate for all communities, especially those that are dealing with systemic barriers to safety and justice. A few commenters suggested that, to remove the burden on facilities to

ensure the notification systems of local responders, EPA should change ''and ensure that'' to ''and *partner* to ensure that.'' Some commenters opposed the language requiring RMP facilities to be responsible for community warning systems and notification of emergencies to the local community. Several commenters stated the requirements of public notification are better suited to third parties, LEPCs, and government agencies already tasked with this coordination. A couple of the commenters stated these agencies have the resources and infrastructure needed for disseminating emergency information to a community and coordinating local response. A few commenters noted that while Integrated Public Alert & Warning Systems (IPAWS) are in use in communities nationwide, many facilities are not in areas with these systems. Furthermore, a few commenters expressed that neither the burden of ensuring IPAWS capabilities nor providing direct notification to the public should fall on RMP facilities. Another commenter noted that IPAWS does not accept information from private entities, only government entities. One commenter stated that while they support the need for a community notification system, they believe EPA should ensure that RMP facilities covered under this rule are in areas already covered by the IPAWS and, if so, re-evaluate how this may impact local governments and their ability to allocate resources.

b. EPA Responses

In response to comments that the language in this provision should be changed from ''and ensure that'' to ''and *partner* to ensure that'' a community notification system is in place, EPA has amended the language as suggested. It was not EPA's intention in the proposed provision to transfer inherent government responsibilities to RMP regulated facilities. Rather, EPA's intention for this provision has always been for facility owners and operators to work with the local responders to ensure that, during a release, a notification system is in place that will notify the public of the impending situation. The Agency expects that in most cases government emergency response officials will be the entities providing the notice. However, for the purposes of this rule, regulated facilities which have accidental releases are responsible for ensuring a prompt emergency response to any release at their facility's covered processes in order to protect human health and the environment. As discussed in the proposal, if local public responders are not capable of providing such a response, the owner or operator is ultimately responsible for ensuring effective emergency response to any release at their facility occurs.

EPA expects the partnership between facility owners and operators and emergency response officials to ensure a public notification system is in place should occur at least during annual coordination discussions under 40 CFR 68.93. Under 40 CFR 68.93, owners and operators are required, among others, to annually coordinate response needs with local emergency planning and response organizations to determine how the facility is addressed in the community emergency response plan. A component of the community emergency response plan is public notification of chemical releases, and it is expected that this component will be discussed and documented by the facility owner or operator as part of the annual coordination obligations.

With regard to specific comments about IPAWS, EPA acknowledges that while IPAWS is not currently operational in all communities, it could be. IPAWS is available in all States statewide, and, if not currently available in certain local communities, it can be made available if the local designated government authorities apply to be an Alerting Authority.[102] While IPAWS is a well-known option as a notification system compliant with this provision, EPA is not requiring the use of this specific system to be the one solely used to notify the public. EPA encourages facility owners and operators to work with response agencies to determine how best to alert a potentially affected community about impending chemical releases.

After review of comments, EPA maintains that the requirement to ensure that, during a release, all necessary resources are in place for a community notification system to function and operate as expected will help protect the public from accidental releases. Furthermore, EPA agrees with the recommendation offered in the comments to enhance the provision. EPA is therefore finalizing the proposed provision with the following modification as previously discussed—revising the proposed provisions for 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to specify that the owner or operator should partner with local response agencies to ensure a community notification system is in place and to document the collaboration.

3. Emergency Response Exercises, 40 CFR 68.96(b)

Field Exercises

a. Comments

Several commenters expressed support for the 10-year timeline for conducting field exercises. One of the commenters noted that the timeline would allow local responders to maintain capabilities and familiarity with facility processes for responding to accidental releases. The same commenters added that the timeline also would allow industry to obtain appropriate staff, experts, and funds. A few commenters particularly expressed support for EPA's efforts to encourage and require facilities to coordinate with LEPCs in circumstances where it is practical. Other commenters opposed the proposed provision, with some offering suggestions for improvement. Several commenters noted that EPA should recognize that not every location has a functioning LEPC that can coordinate field exercises with facilities and that clear carve outs should be established. The commenters suggested that EPA allow facilities to demonstrate a good faith effort to coordinate with LEPCs or demonstrate the absence of an LEPC as exemptions from this requirement. A few commenters expressed concerns regarding the proposed requirement for State and Federal approval of a change in frequency. The commenters noted that it would be inappropriate for EPA to provide Federal and State officials veto power over scheduling an exercise for which they have no required role. One of the commenters recommended that EPA remove the reference to Federal and State agencies, to clarify that RMP facilities do not need to obtain approval from Federal or State agencies if the local emergency responders have identified the frequency of an exercise is impractical.

b. EPA Responses

EPA agrees with comments that describe the varying capabilities of LEPCs and responding agencies and believes the approach the Agency offers supports those comments. The Agency believes the frequency exemption provided, which allows facilities and communities that do not have resources to complete field exercises every 10 years to work together to determine a lesser frequency, is more useful than the Agency being more prescriptive about when the frequency does not apply.

[102] A jurisdiction with the designated authority to alert and warn the public when there is an impending natural or human-made disaster, threat, or dangerous or missing person; *https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/sign-up.*

EPA believes various communities have different concerns as to why they would need to conduct field exercises less frequently and therefore does not expect a one-size fits all approach to be appropriate in accommodating those various circumstances. Additionally, EPA understands that there may be cases where local emergency response agencies are unable or unwilling to coordinate with a regulated facility on exercise frequencies. In such cases, the owner or operator may establish appropriate exercise frequencies and plans on their own, provided they meet the minimum requirements set forth in 40 CFR 68.96. The final rule will not specifically require the owner or operator to document unsuccessful coordination attempts, but EPA believes it will be in the owner or operator's best interest to do so and allow the owner or operator to demonstrate their good faith efforts for consultation in the event that an implementing agency requests this information.

In response to comments that EPA should remove the reference to consultation with Federal and State agencies when developing field exercise frequencies, EPA has amended the language to reflect that the consultation required for this provision need only be with local emergency responding agencies. EPA acknowledges that the emergency response exercise program provisions under 40 CFR 68.96(b), only require coordination with local public emergency response officials, and wants to remain consistent with activities that most likely will occur on the local level.

Therefore, EPA is finalizing the requirement for facility owners and operators to coordinate with local emergency response officials to establish an appropriate frequency for field exercises at a minimum at least once every ten years unless the appropriate local emergency response agencies agree in writing that such frequency is impractical. EPA is not finalizing the requirement for Federal and State agencies to be consulted when coordinating the 10-year (or other determined) frequency.

Emergency Exercise Reports

a. Comments

Several commenters expressed their support for the requirement that the current recommended field and tabletop exercise evaluation report components be mandatory. Other commenters opposed the provision. One of the commenters noted that EPA failed to consider the paperwork burden, hours and costs associated with requiring the reporting of such information. One commenter mentioned that, in 2019, EPA recognized that making the reporting requirements non-mandatory would reduce the regulatory burden and allow emergency response personnel the flexibility to decide which exercise documentation would be most appropriate for the facility and community. The commenter urged EPA to retain this flexibility and not add this requirement to the existing RMP rule. Another commenter noted that the proposed post-exercise reporting requirements provide little value to the program.

b. EPA Responses

EPA disagrees that the requirement of this provision—to make the scope and documentation requirements of the exercise evaluation report mandatory—is overly burdensome. While the elements of the evaluation report were not previously mandatory, there was already a requirement to develop a report. In most cases, for those previously voluntary report elements, particularly lessons learned and recommendations for improvement, EPA had expected these to be included in the report, as they are advantageous in assuring that over time emergency response efforts improved. Other report elements such as names and organizations of each participant are expected to be collected using low-cost methods, such as sign-in sheets or registration websites. Local emergency response organizations participating in exercises will also likely be able to assist the owner or operator in collecting and providing this information. EPA has updated the RIA to consider the minimal paperwork hours and costs associated with this provision.

The Agency acknowledges that it had previously stated in the 2019 reconsideration rule that the scope and documentation provisions left as discretionary would allow owners and operators to coordinate with local responders to design exercises that are most suitable for their own situations. Different facilities use a variety of emergency response equipment types and may have many different actions specified in their emergency response plans. However, as discussed in the proposal, EPA now finds it beneficial to provide consistency between exercise evaluation and incident investigation documentation requirements, as incident investigation reports can be used to satisfy response exercise evaluation report requirements under the current rule. Since EPA cannot anticipate all variations of incidents that may occur, EPA also cannot anticipate all variations of appropriate exercises. The current provision for incident investigation reports under 40 CFR 68.60 and 68.81 identifies general topics that must be included in the report but does not contain further prescriptive requirements about how those topics need to be addressed. Similarly, so will similar general elements guide the content of exercise evaluation reports. The flexibility in both provisions allows participants to develop an evaluation that owners, operators, and responders can learn from.

Upon consideration of comments, EPA is finalizing the provision to require mandatory reporting for exercise evaluation reports as proposed.

VII. Information Availability

A. Summary of Proposed Rulemaking

EPA proposed to amend 40 CFR 68.210 by adding new paragraphs (d), (e), and (f). Proposed 40 CFR 68.210(d) required the owner or operator of a stationary source to provide, upon request by any member of the public residing within six miles of the stationary source, certain chemical hazard information for all regulated processes in the language requested. EPA proposed to require the owner or operator to provide, as applicable:

- Names of regulated substances held in a process.
- Safety Data Sheets (SDS) for all regulated substances at the facility.
- The facility's five-year accident history required under 40 CFR 68.42.
- Emergency response program information concerning the source's compliance with 40 CFR 68.10(f)(3) and the emergency response provisions of subpart E, as applicable, including: (1) Whether the source is a responding stationary source or a non-responding stationary source; (2) name and phone number of local emergency response organizations with which the owner or operator last coordinated emergency response efforts, pursuant to 40 CFR 68.180; and (3) for sources subject to 40 CFR 68.95, procedures for informing the public and local emergency response agencies about accidental releases.
- A list of scheduled exercises required under 40 CFR 68.96.
- LEPC contact information, including LEPC name, phone number, and web address as available.

Proposed 40 CFR 68.210(e) required the owner or operator to provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that:

- Information specified in proposed 40 CFR 68.210(d) is available to the

public residing within six miles of the stationary source upon request. This notification is required to: (1) Specify the information elements, identified in 40 CFR 68.210(b), that can be requested; and (2) provide instructions for how to request the information.

• Identifies where to access information on community preparedness, if available, including shelter-in-place and evacuation procedures.

Proposed 40 CFR 68.210(f) required the owner or operator to provide the requested information under proposed 40 CFR 68.210(d) within 45 days of receiving a request.

In addition to the proposed approach to this information availability provision, EPA also sought feedback on if the 6-mile radius for requesting information is appropriate, or if other alternative distances would be more suitable. The Agency also requested specific information on the increased likelihood of security threats arising from dissemination of this information, and which data elements, or combinations of elements, may pose a security risk if released to the public.

B. Summary of Final Rule

EPA is finalizing 40 CFR 68.210 with changes to address public comments, including potential security concerns. Under 40 CFR 68.210(d), the final rule:

• Expands the population eligible to submit information requests to include members of the public residing, working, or spending significant time in a 6-mile radius from the fenceline of the facility, as opposed to just those residing in a 6-mile radius.

• Includes a verification process to confirm that members of the public submitting information requests reside, work, or spend significant time in the 6-mile radius, and a recordkeeping component of the requestors.

• Limits the language translations offered for information available upon request to at least two major languages used in the community (other than English), while the proposed rule would have required the owner or operator of a stationary source to provide information in any language requested.

• Excludes dates of exercises occurring within one year of the date of request.

• Expands the list of information required to be available upon request to include declined recommendations reported under 40 CFR 68.170(e)(7) and 68.175(e)(7) through (9).

C. Discussion of Comments and Basis for Final Rule Provisions

1. Requirement To Make Information Available to the Public

EPA's Proposed Approach

a. Comments

Several commenters generally supported increasing information sharing and provided further recommendations in addition to the provisions outlined in the proposed rule.

Several other commenters generally opposed the proposed information availability requirements, including those who opposed the provision because it may create unintended community anxiety. Several commenters noted that due to the complex technical information such as SDSs, it will have limited value or use to the public, and instead EPA's efforts should focus on improving the LEPC's ability to interpret the information. One commenter noted that the LEPC should be provided with relevant chemical hazard information, which then could be shared with local citizens. A commenter stated that the general premise that making the RMP more accessible to the public will encourage facility operators to be more safety-conscious via the imposition of ''community pressure and oversight'' is misguided. The commenter added that requiring members of the public to ''pull'' the information from the facility does little to promote proactive safety and accident/risk reduction at the fencelines as that public member must first have some idea that a facility presents a risk.

Several commenters indicated that the proposed information availability requirements would be burdensome for facilities. A few commenters stated that EPA underestimates the costs to deliver community information requests. One commenter noted that facilities may not have the expertise for communicating the information as envisioned by EPA. One commenter stated that the requirement to disclose information would potentially make facilities with covered processes the target of high volumes of requests submitted by individuals or groups.

A few commenters noted that the proposed requirements would be duplicative of EPCRA. Some commenters recommended EPA consider existing programs that already require facilities to report specific information.

b. EPA Responses

EPA continues to believe that providing chemical hazard information to the general public will allow people that live or work near a regulated facility to improve their awareness of risks to the community and to be prepared to protect themselves in the event of an accidental release. The public's ability to participate in emergency planning and readiness is enhanced by being better informed about accident history, types of chemicals present, and how to interact with the stationary source. In drafting both the proposed and final rule, EPA has been selective in identifying what information a source must make available; for example, the Agency has not required the facility to provide an entire RMP to the public.

The Agency disagrees that community involvement in prevention and response planning, which in effect is a form of oversight and may be perceived as ''pressure,'' does not have value in minimizing the likelihood of accidental releases and in improving the responses to such releases. The statute itself provides support for the Agency's position by generally making RMPs available to the public, subject to limited restrictions (42 U.S.C. 7414(c), 42 U.S.C. 7412(r)(7)(H)). In the 2022 SCCAP proposed rule, the Agency discussed its multiple means of access to information about a source to facilitate involvement about the risks a source presents (87 FR 53602). The Agency believes every RMP regulated source presents some level of risk, as each regulated source stores and manages toxic or flammable substances which may be accidentally released. Having the source provide the information set out in 40 CFR 68.210 directly to the public within the confines of the final rule promotes accident prevention and response by facilitating public participation at the local level.

Under CAA section 112(r)(7)(H)(ii)(I)(bb), EPA conducted a benefits assessment in 2000, describing the benefits of providing community access to OCA information specifically but also addressing the benefits of public disclosure of risk management plan information. EPA found that public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents.[103] It also found that comparisons between facilities,

[103] EPA. April 18, 2000. Assessment of the incentives created by public disclosure of off-site consequence analysis information for reduction in risk of accidental releases, at 2.

processes and industries would likely lead industry to make changes and would stimulate dialogue among facilities, the public, and local officials to reduce chemical accident risks. The approach taken in this final rule builds upon the planning approach of EPCRA and EPA studies of the value of ''right to know'' in emergencies.

While EPA acknowledges the potential for ''community anxiety'' as a result from the affected public having easier access to information about safety risks, public participation in the pre-rulemaking listening sessions and during the public hearings in this rulemaking demonstrate that anxiety among the public near facilities already plainly exists as a result of the more cumbersome disclosure authorizations of the current rule. The Agency expects a more informed and involved public, as a result of this final rule, to have less fear of the unknown.

In response to commenters recommending that the facility share the information with the LEPC, which would then be responsible for sharing the information with interested members of the public, EPA notes analysis of active facility risk management plan submissions demonstrates that 10 percent of active facilities have not provided the names or information about their LEPCs. Without further information as to why facilities left this portion of the risk management plan submission blank, it is possible that LEPCs may not exist for those facilities, that the LEPC may have existed but is inactive, or that the facility is not in communication with its LEPC. EPA routinely receives Freedom of Information Act (FOIA) requests for OCA and non-OCA versions of the risk management plan database from local and State emergency response entities, which may indicate that local emergency response entities also have difficulty in obtaining this information from facilities. Therefore, EPA believes that providing information solely to LEPCs would not be sufficient or improve safety as effectively as additionally requiring that information be provided directly to the affected public.

Regarding comments on the burden of the information availability requirements, EPA notes that other statutes and regulatory programs, or other provisions of the RMP, require the stationary source to assemble the information that the rule makes available upon request (*e.g.,* accident history, SDSs, and aspects of the emergency response program). Thus, the burden of making this information directly available from the source is minimal.

Regarding comments stating that the proposed requirements are duplicative of existing reporting requirements, EPA believes, for the reasons already stated, that this information should be more easily accessible to the public than the existing approaches to access information under EPCRA and other programs/regulations.

Translation Requirements

A commenter stated that the information should be provided in plain language and in multiple languages. Another commenter stated it is difficult for facilities to translate technical information into multiple languages. A couple of commenters noted that the proposed translation requirements go beyond EPA authority and would be burdensome and costly.

The final rule requires that language translations be offered in at least two other major languages in the community. EPA expects owners and operators to use the most recent Census Language Use data,[104] or other recent authoritative information,[105] to determine the two major languages spoken in a comparable size designation to the six-mile or worst-case release scenario distance radius of their facility. EPA believes this will provide the vast majority of the surrounding community with the information requested and account for language barriers while minimizing burden to facilities. Requiring translation in up to two of the major non-English languages of the community reflects a balance of the right-to-know purposes of CAA section 112(r)(7)(B)(iii) with the time and financial burden of providing such translations. The Agency believes community involvement is integral to a well-functioning accident prevention program, and the translation requirement promotes accomplishing this objective.[106]

Notification Requirements

One commenter noted that the information available to the public is meaningless if the public does not know it exists. Therefore, the commenter suggested that EPA require facilities to provide notice to communities within six miles that they have the right to request this information.

EPA agrees with the commenter that the information availability requirements are most impactful if the public is aware of the availability of the information. Therefore, EPA is finalizing the proposed requirements that the owner or operator of the facility provide ongoing notification on either a company website, social media platforms, or through other publicly accessible means, that facility information is directly available to the public within six miles upon request.

45-Day Disclosure Timeline

A few commenters suggested EPA shorten the required response time. A couple of commenters specifically expressed concern that the 45-day period to receive information once requested is too long for people to wait for that urgently needed information.

EPA is finalizing the 40 CFR 68.210(g) requirement that the facility owner or operator provide the information under 40 CFR 68.210(d) to the requester within 45 days of receiving a request. EPA selected 45 days because that timeframe is consistent with the requirement for the public availability provision of facility chemical inventory information (*i.e.,* ''Tier II information'') under section 312(e)(3)(D) of EPCRA, which states, ''a State emergency response commission or LEPC shall respond to a request for Tier II information under this paragraph no later than 45 days after the date of receipt of the request.'' EPA believes the 45-day timeline appropriately balances the burden imposed on facilities to keep chemical hazard information updated and the need to provide the public with timely access to this information. EPA encourages facilities to update their chemical hazard information as needed to ensure that accurate information can be made available to the requester within the required timeframe.

Suggestions for EPA To Disclose Facility Information

Many commenters suggested that EPA create an online database to contain information from facilities. A couple of commenters stated that it is essential for EPA to take prompt action to provide publicly accessible information on RMP facility hazards and safety plans on the Agency's website. Similarly, a few commenters stated that EPA should develop, maintain, and update a public, multilingual online database containing non-protected RMP information.

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[104] *https://data.census.gov/table?t=Language+Spoken+at+Home.*

[105] *https://www.lep.gov/language-access-planning.*

[106] While not the basis of this provision, these language translation requirements advance the policies in Executive Orders 13166 and 14096: 88 FR 25251 (April 26, 2023), *https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all;* 65 FR 50121 (August 16, 2000), *https://www.federalregister.gov/documents/2000/08/16/00-20938/improving-access-to-services-for-persons-with-limited-english-proficiency.*

By policy, EPA has restricted access to the RMP database, even though only a portion of the database is restricted by CAA section 112(r)(7)(H) and its implementing regulations in 40 CFR part 1400. As described in the 2022 SCCAP proposed rule, EPA intends to, at a prospective date, begin publishing non-OCA risk management plan data annually, less any CAA section 112(r)(7)(H) protected sensitive information (87 FR 53602). The discussion in the proposed rule was intended to highlight some of the issues that are relevant to relaxing restrictions on data availability.

Environmental Justice and Fenceline Communities

Several commenters recommended EPA consider EJ and fenceline communities when developing information availability provisions, including, by championing community information as a fundamental EJ goal. One commenter suggested that EPA inform fenceline communities that they live near an RMP facility because, oftentimes, people are unaware that they live near RMP facilities.

EPA has considered impacts and risks to local communities, including communities with EJ concerns and fenceline communities throughout the rulemaking process. EPA believes that the final information availability provision makes significant improvements to provide more information to the public, including communities with EJ concerns and fenceline communities.

2. 6-Mile Radius

a. Comments

A few commenters supported EPA's proposed approach of the 6-mile radius for requesting information.

Several commenters recommended EPA abandon any geographic limitation and instead make basic emergency preparedness information commonly available to the public. One commenter emphasized that the proposed rule violates FOIA as non-OCA RMP data are public information. The commenter noted that EPA cannot deny public access to this information. The commenter also noted that this restriction would violate 42 U.S.C. 7412(r)(7)(B), which requires EPA to provide prevention, incident detection, and response ''to the greatest extent practicable.'' One commenter stated that the proposal's within 6-mile residency requirement creates an unnecessary obstacle to accessing information that could undermine EPA's goals to address EJ, especially as people in fenceline communities may not have a trusting relationship with government authorities, a home address, or documented status to demonstrate their residency. The commenter requested EPA eliminate the requirement that community members demonstrate they live within six miles of a facility to access information.

Several commenters suggested that the 6-mile radius lacks justification and is arbitrary. Some of the commenters expressed concerns that residents could use a P.O. Box within 6-miles of a facility to obtain access to and share information. Several commenters noted there are no means to retain or prevent information from being shared outside of its intended use.

Many of the commenters referenced social media and other web-based networks as means of quickly spreading sensitive information. Some commenters added that terrorists and criminals would be able to readily obtain sensitive information and could easily falsify their identity or location. Several commenters requested EPA to clarify what is meant by the requirement of a person to ''reside'' within six miles of a facility and how a facility will be able to verify the information.

A couple of the commenters suggested EPA build upon existing programs and safeguards, such as LEPCs, to protect sensitive chemical information instead of choosing to impose an arbitrary 6-mile threshold. One commenter added that EPA did not explain how the 6-mile radius requirement builds on existing regulatory programs designed by Department of Homeland Security (DHS) and EPA to safeguard sensitive information. One commenter recommended that anyone requesting information should be required to complete a mandatory background check before any information is shared. Another commenter stated that EPA should not put the responsibility of vetting community members on facilities.

b. EPA Responses

EPA believes the 6-mile radius restriction to be reasonable, as 90 percent of all toxic worst-case distances to endpoints are within six miles or less, and almost all flammable worst-case distances are less than 1 mile (87 FR 53601). The 6-mile radius for being able to request information from facilities allows people in most areas potentially impacted by a worst-case scenario to have access to information while also providing a limit on widespread access to nationwide assembly of data. EPA agrees with commenters that allowing only those individuals that reside within the 6-mile radius to access information is too limited and has thus expanded the provision in the final rule to also allow members of the public working or otherwise spending significant time in the 6-mile radius to request information from a facility.

The 6-mile radius limitation also seeks to limit the potential security risk of allowing anonymous confidential access to this information to the entire public that was of concern to EPA in the 2019 reconsideration rule. This approach strikes a better balance between those security concerns and the interests of people spending significant time near facilities who could benefit from the information, including personal preparedness in the event of an accident, knowledge of potential risks and safety conditions where one lives, and more informed participation in community emergency and safety planning.

EPA is also clarifying in the final rule that the 6-mile radius is from the fenceline of the facility. EPA expects that in most cases, six miles from the fenceline is the appropriate definition, as opposed to six miles from process locations or any other location at the facility, because this consistent approach captures the wide variations of facility size, process locations and any process movement within the facility. It is also simpler to verify for the public and oversight agencies and does not require revealing of the precise location of the place in the process from which a release could occur, which may raise security concerns.

In response to comments requesting clarification on what it means for a person to ''reside'' within six miles of a facility, the final rule specifies that members of the public residing, working, or spending significant time in a 6-mile radius from the fenceline of the facility are able to submit information requests to a source. EPA interprets residing as occupying a dwelling (owning or renting), working as having paid employment, and spending significant time as frequently using services, volunteering, visiting with family or friends, etc.

Regarding concerns about the verification of the identity of members of the public requesting information, EPA is requiring sources to provide instructions for how to request the information, which should include the necessary verification components for the public within a 6-mile radius of the facility. Nothing in the rule requires a facility to accept a mere P.O. Box address as evidence of residence, employment, or presence within the 6-mile radius. For this final rule, EPA is

also requiring owners and operators to maintain a record of the requestors. The final rule leaves substantial flexibility for facilities to design a process for obtaining verification and keeping records of requestors that allows for facilities to have a suitable, minimally burdensome process for themselves and the community. The final rule allows for a straightforward process that does not hinder the right of the public to access this information, allows facilities to be aware who has their information, and permits oversight by implementing agencies. However, as this is a performance-based provision, just as most components of the rule, EPA recognizes that there is not a one-size fits all approach that works best for notifying the public that this information is available and verifying presence within a 6-mile radius. EPA expects facility owners and operators to notify the public that information is available in a variety of ways, such as using free or low-cost internet platforms, and social media tools that are designed for sharing information with the public. EPA also expects verification of the population within the 6-mile radius to be carried out through many methods, such as asking a member of the public to provide a utility bill for verification of residence, pay stub for verification of employment, or specific documentation to verify significant time spent within the 6-mile radius. EPA encourages the facility owner or operator to coordinate information distribution and verification requirements with the LEPC or local emergency response officials to determine the best way to reach public stakeholders. EPA notes that the owner or operator shall document the method and the location of the notification in the RMP pursuant to 40 CFR 68.160(b)(22).

The 6-mile radius provision reasonably and practicably balances enhancing means of access for affected communities while also limiting security concerns about widespread, anonymous access that raised concerns in EPA's 2019 reconsideration rule. Further, the final provisions do not limit or violate FOIA rights of the public to obtain Government-held records.

3. Data Elements To Be Released to the Public

a. Comments

In the preamble of the proposed rule, EPA solicited comment on its announcement of its policy decision that, at some future date, EPA would post online portions of the RMP database that do not contain legally restricted information or information that raises significant security concerns. The Agency solicited comments to help identify such information. The comment solicitation did not propose regulatory changes, but instead sought public input on a policy position. Nevertheless, because some of the data elements EPA is considering releasing through policy change are the same data elements facilities will be required to disclose under the information availability regulatory provision in this final rule, discussion of the comments and the Agency's rationale of releasing those data elements, through a future policy change and in this final rulemaking, is provided here.

In response to this comment solicitation, many commenters discussed data elements that should not be publicly released in order to avoid security threats. One commenter stated that security sensitive information, such as OCA data, should only be publicly accessible through Federal Reading Rooms. A few commenters listed specific elements that should not be publicly available, citing a potential increased vulnerability to terrorist attacks.

Data elements noted by commenters as posing security threats if released to the public, which the commenters argued should therefore not be disclosed, include:

- Chemical hazard information.
- Specific substance names and hazard characteristics.
- Names of regulated substances held in a process, SDSs, and any site-specific information.
- Information regarding hazardous substances on site.
- Storage location and transportation information.
- Emergency response details.
- Audit reports and exercise schedules and summaries.
- Accident history.

One commenter stated that sensitive information, such as audit reports, exercise schedules and summaries, and emergency response details, does not prevent accidents or reduce potential harm, but does increase the vulnerability of a facility to attacks by terrorists or other criminals. One commenter stated that specific information regarding security threats is held by DHS, and providing documented security threats, or security risks from prior incidents or near misses, provides a road map for bad actors and propagates future security threats.

A couple of commenters noted that some information, including CBI and trade secrets, should not be shared with the public. Another commenter stated that proprietary information about processes and chemicals should be in the safety plan without disclosing details that would allow the methods, procedures, or other intellectual property to be stolen. One commenter noted that EPA should reinstate previous language that enabled facilities to assert a claim of business confidentiality regarding any information they are required to make public under the RMP rule.

b. EPA Responses

The responses below address comments concerning the data elements required to be released by the source upon request. Additionally, EPA will consider the input from the commenters when the Agency proceeds with a policy decision on whether to put some portions of the RMP database online again in the future. As such, the responses that immediately follow are also provided to facilitate public dialogue about implementing EPA's potential policy change.

EPA agrees with commenters that suggested only information that could improve community awareness of risks should be made available to the public. Having the source provide the information set out in 40 CFR 68.210 directly to the public promotes accident prevention by facilitating public participation at the local level. It should be noted that EPA has been selective in identifying what information a source must make available; for example, the Agency will not require the facility to provide an entire RMP to the public. EPA believes the public has a substantial interest in knowing what chemicals are present in the community and what it should do in the event of an accidental release involving facilities handling those chemicals. The public also has a substantial interest in having the opportunity to participate in an informed manner regarding emergency planning in its community. Facilitating access to information before an incident promotes more effective communication of information during responses to incidents, and thus promotes more effective response programs. (See the requirement in CAA section 112(r)(7)(B)(ii)(III) for response programs to address informing the public.) The public's ability to participate in emergency planning and readiness is materially advanced by being better informed about accident history, types of chemicals present, and how to interact with the stationary source. Nevertheless, of the information options proposed, EPA acknowledges some security concerns with releasing

information identifying actual upcoming dates of tabletop or field exercises. EPA is therefore requiring facilities to provide a list of exercises that will occur within the year, indicating that they will occur, rather than identifying the specific date they will occur.

Although commenters did not explicitly request that the list of information required to be available upon request should include declined recommendations from new provisions, EPA is including this within the final rule. EPA intended this information to be available as the Agency indicated in the proposal that including this information in the RMP would ultimately enable the public to ensure facilities have conducted appropriate evaluations to address potential hazards that can affect communities near facility fencelines. When local citizens have adequate information and knowledge about facility hazards, EPA believes that facility owners and operators may be motivated to further improve their safety in response to community pressure and oversight.

At this time, EPA will not require the owner or operator to make additional information available to the public, such as STAA reports, incident investigation reports (with root cause analyses), and third-party audit reports. EPA acknowledges there is public interest in having these reports available to them, but these documents, which can be lengthy (*e.g.,* the sectors subject to STAA requirements have multiple processes and some PHAs are hundreds of pages), technically complex, and could contain not only CBI, but sensitive security information involving process or equipment vulnerabilities. Even sanitizing submitted documents and providing upfront justification of CBI claims would entail a significant level of burden upon industry and EPA. It would not be practical or a good use of resources to have thousands of documents submitted to EPA, to any other body, or with the RMP submission. However, EPA may explore opportunities to simplify this information for public access in a future rulemaking.

EPA is committed to safeguarding OCA information in accordance with requirements specified in the CSISSFRRA, which allows for any member of the public to access paper copies of OCA information for a limited number of facilities. This OCA information remains accessible to the public only in Federal Reading Rooms [107] or upon voluntary disclosure by the source itself. CAA section112(r)(7)(H)(v)(III).

EPA has received comments in the past with concerns regarding CBI and directs these commenters to the requirements in 40 CFR 68.152 for substantive criteria set forth in 40 CFR 2.301. EPA acknowledges and shares industry's concerns pertaining to protection of CBI information, but EPA believes that the Agency has addressed these concerns by providing the same CBI protections for the public information availability provisions that exist for the RMP under 40 CFR 68.151 and 68.152 as for information contained in the RMP required under subpart G. As provided under 40 CFR 68.151(b)(3), an owner or operator of a stationary source may not claim five-year accident history information as CBI. As provided in 40 CFR 68.151(c)(2), an owner or operator of a stationary source asserting that a chemical name is CBI shall provide a generic category or class name as a substitute. CBI disclosure under EPCRA is controlled by that statute and rules implementing the information access provisions of EPCRA. Furthermore, EPA is not requiring STAA reports to be submitted to LEPCs or the public in the final rule, and, therefore, no CBI concerns exist for these reports. If an owner or operator has already claimed CBI for a portion of the RMP, then that claim still applies for the disclosure elements in the information availability provisions of the rule. The owner or operator should provide a sanitized version as described in the RMP*eSubmit User's Manual. This policy is consistent with existing RMP guidance and practices.

4. Security Concerns

a. Comments

A few commenters stated that there is no evidence that increasing information availability leads to security issues. Another commenter noted that there is no evidence that community members have caused a chemical disaster or that they pose any security risk. The commenter stated that a valuable way to address any security risks is to provide full public transparency and give facilities more incentive to prevent disasters by reducing or minimizing hazards up front. One commenter noted that eliminating chemical hazards and reducing risks present at industrial chemical facilities will not only prevent disasters in the event of an accident but will also prevent and reduce harm in the event of an intentional act, such as a cyberattack.

Several commenters emphasized security risks of the proposed rule, including risks of terrorist attacks or criminal activity. One commenter stated that the proposed information disclosure requirements raise security risks and impose significant burdens with no added benefit. Another commenter noted that providing additional sensitive accident investigation and chemical information to the public could result in a national homeland security concern.

Several commenters noted the additional risks of cybersecurity attacks. A commenter added that other Federal agencies opposed these requirements, citing security concerns detailed in a 2000 report issued by the Department of Justice (DOJ). A couple of commenters noted that other Federal agencies raised security concerns with the proposed disclosure requirements during interagency review.

Several commenters recommended that EPA withdraw its proposed information sharing provisions due to conflicts with information security protocols under DHS Chemical Facility Anti-Terrorism Standards (CFATS) regulations. One commenter noted that the availability of information requirements included in the proposed rule are in conflict with CSISSFRRA, U.S. Department of Transportation (DOT) Regulations, and DHS Regulations. A few commenters noted that the proposed public disclosure requirement is contrary to the Critical Infrastructure Information Act of 2002, and one commenter noted it is also in conflict with the Maritime Transportation Security Act. One commenter noted that EPA's proposed information disclosure requirements may conflict with existing DHS regulations restricting the disclosure of Chemical-terrorism Vulnerability Information (CVI).

b. EPA Responses

EPA acknowledges the security concerns raised by commenters and is committed to ensuring a balance between making information available to the public while also safeguarding that information. EPA worked closely with Federal partners, including the DHS and the Federal Bureau of Investigation (FBI), to develop information availability requirements that strike a balance between security concerns and the need for sharing chemical hazard information with the public. EPA believes that the finalized approach is consistent with existing requirements to secure sensitive

[107] *https://www.epa.gov/rmp/federal-reading-rooms-risk-management-plans-rmp.*

information. EPA also believes the current approach to notify the public that information is available upon request strikes an appropriate balance between various concerns, including information availability, community right-to-know, minimizing facility disclosure burden, and minimizing information security risks.

EPA believes the information disclosures required by the final rule are fully consistent with the statutes and regulatory programs identified by the commenters as enacted after the 1990 CAA Amendments. For example, CSISSFRRA specified that portions of RMPs containing ''offsite consequence analysis information'' (OCA Information), any electronic data base created from those portions, and any statewide or national ranking derived from such information is subject to restrictions on disclosure under CAA sections 112(r)(7)(H)(i)(III) and 112(r)(7)(H)(v). Regulations jointly promulgated by EPA and the DOJ further define OCA Information in 40 CFR 1400.2(j). The final rule will not require disclosure of release scenarios or rankings based on such scenarios, nor will it make available any information based on such scenarios. First, the Critical Infrastructure Information Act restricts information ''not customarily in the public domain.'' Further, CFATS creates a category of information, CVI, which protects certain information submitted to DHS and necessary to implement CFATS (see 6 CFR 27.400). In promulgating CFATS, DHS announced its intent to preserve Federal release disclosure, emergency planning, and accident prevention statutes, including EPCRA and CAA section 112(r) (see 72 FR 17714, April 9, 2007). In this final rule, EPA creates no tension between after-enacted programs and enhancement of the RMP. The information that the final rule requires facilities to disclose largely draws on information otherwise in the public domain and simplifies the public's access to it. EPA has acknowledged that there would be some value to assembling a centralized, anonymously accessible government database of already-public information relevant to identifying and prioritizing facilities for potential impacts. However, this final rule does not create a central database of the information required to be disclosed, nor does it permit anonymous access. The limits on disclosure and access are important steps to minimize security risks. EPA has therefore coordinated with both the DHS Cybersecurity & Infrastructure Security Agency (CISA) which manages the CFATS program and the FBI in order to take steps that will balance accident prevention and security interests.

There exists no publicly available database of intentional acts upon the chemical process industries in the United States. In a 2021 study, researchers attempted to compile a database of such incidents, finding documentation of 84 incidents in the chemical and petrochemical industries.[108] [109] Root cause data on these incidents, which are not available, would be needed to determine if availability of information on the facility contributed to terrorist incidents, which were second to cybersecurity incidents as the most frequent overall cause. According to the database, no terrorist event in the process industries (excluding transportation and pipelines) has occurred in North America after the 1970s.[110] However, a lack of incidents may result from the safeguards currently in place. DHS promulgated CFATS in accordance with the Homeland Security Appropriations Act of 2007, owing to insufficient security at industrial facilities. In promulgating CFATS, DHS did not intend for information created under CAA section 112(r) to constitute ''Chemical-terrorism Vulnerability Information,'' which is sensitive information pursuant to CFATS requirements (72 FR 17714). EPA routinely coordinates with DHS as part of the Chemical Facility Security and Safety Working Group and commits to working with DHS to find regulatory solutions that balance community right-to-know with security concerns.

Accidental releases occur much more often than intentional events (about 100 per year using EPA RMP-reportable accidents). Pre-incident information, such as the locations of facilities and potential disasters, allows communities to be more prepared for disasters,[111] which DOJ also recognized in its 2000 risk assessment.[112] With over 20 years of data now, EPA has based many of the finalized provisions on prior accident information. EPA acknowledges that the Agency must consider whether some non-OCA data elements, or combinations of elements, may not be suitable for public release and should be restricted based on potential security risks. EPA has been and will continue to work with DHS, DOJ, and other Federal partners on identifying these risks.

Commenters have referred to certain comments from other agencies in connection with drafts of prior RMP rulemakings. The cited material appeared in the docket as required by CAA section 307(d)(4)(B)(ii). Such material is explicitly excluded from the record for judicial review under CAA section 307(d)(7)(A). The introduction of this material into the record by these commenters is an attempt to avoid the exclusion under CAA section 307(d)(7)(A). Moreover, the comments addressed early stages of the rules that prior Administrators signed, and not the versions of prior proposed and final rules that were published, and do not reflect the ultimate positions of sister agencies with respect to what was published.

Regarding concerns that the 2000 DOJ report is in conflict with the information availability requirements, EPA believes the 6-mile radius provision ensures that, even if community members obtain information related to OCA data, it would require a difficult nationwide-coordinated effort among people within six miles of each facility to create the type of online database described in DOJ's report. The provisions simply require RMP facilities to provide their chemical hazard information to communities within a 6-mile radius of the facility, when previously they were not required to. Because RMP facilities were, and will continue to be, in possession of this information, it is unlikely that such a change would result in any possible prejudice to the facilities based on their reliance on the 2019 reconsideration rule provisions, which have only been in place for 4 years.

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[108] Valeria Casson Moreno et al., ''Analysis of Physical and Cyber Security-Related Events in the Chemical and Process Industry,'' *Process Safety and Environmental Protection* 116 (2018), 621–31, doi:10.1016/j.psep.2018.03.026.

[109] Matteo Iaiani et al., ''Analysis of Events Involving the Intentional Release of Hazardous Substances from Industrial Facilities,'' *Reliability Engineering & System Safety* 212 (2021), 107593, doi:10.1016/j.ress.2021.107593.

[110] This is not a complete dataset, because it was developed based on publicly available information. Available in the supplemental material of Matteo Iaiani et al., ''Analysis of Events Involving the Intentional Release of Hazardous Substances from Industrial Facilities,'' *Reliability Engineering & System Safety* 212 (2021), 107593, doi:10.1016/j.ress.2021.107593.

[111] Holly Carter, John Drury, and Richard Amlôt, ''Recommendations for Improving Public Engagement with Pre-incident Information Materials for Initial Response to a Chemical, Biological, Radiological or Nuclear (CBRN) Incident: A Systematic Review,'' *International Journal of Disaster Risk Reduction* 51 (2020), 101796, doi:10.1016/j.ijdrr.2020.101796.

[112] DOJ, Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet (2000), *https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-2003,* EPA–HQ–OEM–2015–0725–2003.

VIII. Other Areas of Technical Clarification/Enforcement Issues

A. Summary of Proposed Rulemaking

1. Process Safety Information, 40 CFR 68.65

EPA proposed to refine the language of 40 CFR 68.65 to clarify that the requirement to keep PSI up to date explicitly applies to Program 3 processes.

2. Program 2 and 3 Requirements for Compliance With RAGAGEP, 40 CFR 68.48 and 68.65

EPA proposed to harmonize 40 CFR 68.48(b) and 68.65(d)(2) so that the requirements for compliance with RAGAGEP for Program 2 and Program 3 processes are identical. Specifically, EPA proposed to require that Program 2 processes and Program 3 processes document compliance rather than merely ''ensure'' compliance. EPA also proposed to remove the sentence ''Compliance with Federal or State regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.''

3. Retention of Hot Work Permits, 40 CFR 68.85

EPA proposed to require retention of hot work permits for five years, in accordance with the recordkeeping requirements in 40 CFR 68.200.[113]

4. Storage Incident to Transportation, 40 CFR 68.3

EPA proposed additional regulatory language that includes a specified number of hours that a transportation container may be disconnected from the motive power that delivered it to the site before being considered part of the stationary source. EPA proposed to apply a 48-hour time frame to this term. EPA also proposed to modify the definition of ''stationary source'' to further clarify ''storage incident to transportation'' in 40 CFR 68.3 by adding an explanation to the transportation container language in the stationary source definition. The proposed regulatory text would add examples of what a transportation container could be, such as a truck or railcar, and clarify that for RMP purposes, railyards and other stationary sources actively engaged in transloading activities may store regulated substances up to 48 hours total in a disconnected transportation container without counting the regulated substances contained in that transportation container toward the regulatory threshold.

In addition to the proposed approach, EPA requested comment on suggestions for other appropriate time frames and any safety concerns that may arise from transportation containers being exempt from the RMP rule when disconnected for less than 48 hours.

5. Retail Facility Exemption, 40 CFR 68.3

EPA proposed to adjust the regulatory text to clarify that the definition of ''retail facility'' is one in which more than one-half of the ''annual'' income ''in the previous calendar year'' is obtained from direct sales to end users or at which more than one-half of the fuel sold over that period, by volume, is sold through a cylinder exchange program.

6. RAGAGEP Gap Analysis, 40 CFR 68.69 and 68.175

EPA proposed that the RMP regulations clarify that PHAs must include an analysis of the most recently promulgated RAGAGEP in order to identify any gap between practices related to the facility's design, maintenance, and operation, and the most current version of RAGAGEP.

EPA also proposed to require owners or operators to specify in their risk management plans why PHA recommendations associated with adopting practices from the most recent version of RAGAGEP were not implemented. EPA proposed to allow facilities to choose from pre-selected categories to provide justification for not implementing recommendations.

B. Summary of Final Rule

EPA is not finalizing the proposed supplementary storage incident to transportation language at 40 CFR 68.3.

EPA is finalizing the provisions for PSI, Program 2 and 3 requirements for compliance with RAGAGEP, and the RAGAGEP gap analysis as proposed.

EPA is finalizing the retention of hot work permits and retail facility exemption proposed changes with the following modifications:

- Revising 40 CFR 68.85(b) to require retention of hot work permits for three years rather than five.
- Revising 40 CFR 68.3 to clarify that ''year,'' in the context of the definition of ''retail facility,'' can be calendar or fiscal year.

C. Discussion of Comments and Basis for Final Rule Provisions

1. Process Safety Information

a. Comments

A couple of commenters expressed support for EPA's proposal to clarify that the requirement to keep PSI up to date explicitly applies to Program 3 processes. Several commenters stated that the proposal to update the PSI requirements is unnecessary, redundant with OSHA PSM requirements, and burdensome. Another commenter asserted that EPA should not amend 40 CFR 68.65(a) as proposed and should instead adhere to the existing regulatory language for Program 3 sources to ensure that the long-standing consistency between the RMP and PSM standard remain. Some of the commenters also stated that implementation would result in unnecessary costs on facilities. One commenter noted that, as currently written, the regulation does not impose a continuing obligation to maintain PSI. The commenter noted that as PHAs are conducted on five-year cycles, the applicable PSI need only be compiled on a corresponding five-year cycle and requiring that PSI be kept up to date will have associated costs that need to be accounted for in the RIA.

b. EPA Responses

EPA appreciates the support for the Agency's clarifications to the PSI requirements and is finalizing the provision as proposed. EPA believes that refining the language of 40 CFR 68.65 to reflect existing requirements clarifies that such PSI is required to be up to date for Program 3 processes—just as it is for Program 2 processes—without the need for evaluating compliance with management of change, conducting a pre-startup safety review, or meeting PHA requirements.

EPA disagrees that clarifying the PSI requirements is unnecessary. For processes subject to Program 3 requirements, the PSI requirements under 40 CFR 68.65 do not explicitly address updating PSI. Instead, that subject is addressed in several other parts of the Program 3 requirements, including the management of change requirements in 40 CFR 68.75, the pre-startup review requirements in 40 CFR 68.77, and the requirement to document that equipment complies with RAGAGEP in 40 CFR 68.65(d)(2). EPA is simply clarifying the PSI requirements in order to make the regulation more consistent throughout.

Additionally, EPA disagrees that the regulation, as currently written, does

[113] 40 CFR 68.200: ''The owner or operator shall maintain records supporting the implementation of this part at the stationary source for five years, unless otherwise provided in subpart D of this part.''

not impose a continuing obligation to maintain PSI. The requirement in 40 CFR 68.75(d) that PSI must be updated to reflect changes implies that PSI must be maintained. Further, the requirement to ''document compliance with RAGAGEP'' additionally supports that current PSI shall be maintained, since compliance cannot be documented without the maintaining of current PSI documents.

In response to comments that the updated PSI requirements would be inconsistent or redundant with OSHA's PSM requirements, EPA disagrees. EPA has coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification to the RMP regulations does not create conflicting requirements with OSHA's PSM standard.

EPA disagrees that this modification will result in unnecessary costs on facilities. The intent of the changes to the regulatory text is to simplify implementation for facilities, as well as oversight, thereby improving chemical safety. The amendments do not change the meaning of the RMP rule. Therefore, EPA does not expect the changes to result in any additional costs for facilities.

2. Program 2 and 3 Requirements for Compliance With RAGAGEP

a. Comments

A couple of commenters supported EPA's proposal to clarify RAGAGEP requirements for Program 2 and Program 3 processes. One commenter stated that it is important to clarify the RAGAGEP requirements because codes, standards, and practices change over time. The commenter also urged EPA to strengthen the proposed changes by expanding the scope of applicability of the RAGAGEP requirement to cover all facilities. The commenter noted that the CAA directs EPA to ensure RAGAGEP is fully included in the assessment and process safety requirements, and mandates implementation ''to the maximum extent practicable.'' Another commenter stated that the industry-wide understanding of the RAGAGEP's meaning varies widely, and the proposed clarification may help alleviate this problem and address the concern that Federal and State regulations may lag behind recognized industry standards for safety.

A couple of commenters stated that the requirement that owners ensure and document that processes are designed in compliance with RAGAGEP is an already-existing PSM requirement, and revisions to the text are therefore not necessary. A couple of commenters opposed removing the sentence, ''Compliance with Federal or State regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.'' One commenter stated that if EPA feels that Federal or State regulations lag behind current RAGAGEP, then the Agency should advocate for those specific Federal or State regulations to be updated. The other commenter stated that the CAA does not grant EPA the authority to substitute compliance with current RAGAGEP for compliance with promulgated OSHA regulations.

b. EPA Responses

EPA is finalizing the proposed changes to the regulatory language. EPA agrees that doing so will clarify the requirements and address the concern that Federal or State regulations may lag behind current RAGAGEP. At this time, EPA is not expanding the scope of RMP applicability of RAGAGEP beyond Program 2 and 3 processes. EPA does, however, encourage all facilities to use RAGAGEP as it reflects well known industry practices and lessons learned shown to improve process safety and prevent accidents.

EPA disagrees that the changes to the regulatory language are unnecessary. EPA has found that the distinction between ''ensure'' for Program 2 processes and ''document'' for Program 3 processes creates confusion, and requiring facilities to ''document'' compliance, rather than merely ''ensure'' compliance, removes this ambiguity. With regards to Federal or State regulations that lag behind current RAGAGEP, EPA notes there is a difference when updated codes augment existing regulations versus when they conflict. To the extent they conflict, existing regulations reign over new RAGAGEP. However, if a facility can comply with existing regulations and new RAGAGEP, then there is an obligation to comply with both. EPA believes this provision will help resolve confusion when more current RAGAGEP identify potential shortcomings in a facility's process.

EPA has coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification to the RMP regulations does not create conflicts with the requirements of the OSHA PSM standard.

3. Retention of Hot Work Permits

a. Comments

A few commenters expressed support for the proposed five-year retention period for hot work permits. One of the commenters stated that the provision advances the rule's directive to ensure prevention and compliance to the greatest extent practicable and assures compliance as expeditiously as practicable. Another commenter stated that these simple recordkeeping requirements are not burdensome, contribute to further safety, and can help demonstrate compliance in the event of an audit.

Several commenters stated that the retention of hundreds of expired hot work permits for five years is unnecessary and creates a substantial recordkeeping and administrative burden for facilities. A few commenters noted that retaining the hot work permits for five years provides no added safety benefits to the facility or surrounding community. A commenter pointed out that facilities are already required to conduct compliance audits on three-year intervals and to retain the two most recent compliance audit reports, meaning that compliance audit documentation will be retained for at least six years. The commenter stated that these audits will review hot work compliance and are available to implementing agency personnel; therefore, the proposed hot work permit retention requirement is excessive in proportion to the marginal benefit to implementing agencies.

A couple of commenters noted that OSHA does not require that permits be retained beyond the completion of the hot work task. Similarly, another commenter pointed out that EPA failed to acknowledge that a five-year record retention period for hot work permits would break from the existing PSM rule, where OSHA requires hot work permits to be maintained only during the hot work. The commenter recommended that EPA maintain consistency with the PSM rule. Another commenter agreed that there should be no requirement to retain hot work permits beyond the completion of the hot work authorized by each permit.

Some commenters suggested retaining hot work permits for periods of time other than five years. A few commenters specified that a one-year retention requirement would be more appropriate. One commenter recommended reducing the retention period from five years to three years, since the three-year period is consistent with the three-year audit period under 40 CFR 68.58 and 68.79 for Program 2 and 3 facilities.

b. EPA Responses

EPA agrees that adding a requirement to retain hot work permits after the completion of operations would help ensure prevention and compliance to the greatest extent practicable and contribute to further safety. However, based on comments on the proposed timeframe, EPA is finalizing a three-year retention period of hot work permits as opposed to the five years that were proposed.

EPA does not agree that retention of hot work permits after the completion of operations is unnecessary. Under the existing RMP regulations, it can be difficult for implementing agencies, and the owner or operator, through the compliance audit provision (40 CFR 68.58 and 68.79), to determine if the facility has been conducting hot work in compliance with the requirements of 40 CFR 68.85, unless the facility is conducting hot work at the time of the inspection or audit and has hot work permits on file. Adding a requirement to retain hot work permits after the completion of operations will address this issue. EPA is finalizing a three-year retention period of hot work permits in order to make the requirement less burdensome for facilities conducting hot work often and to align the requirement with the three-year audit period under 40 CFR 68.58 and 68.79.

In response to comments that the proposed retention period would be inconsistent with OSHA's PSM rule, EPA has coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification to the RMP regulations does not create conflicts with the requirements of the OSHA PSM standard.

4. Storage Incident to Transportation

EPA's Proposed Approach

a. Comments

One commenter expressed support for the proposed additional regulatory language and the proposed 48-hour time frame. Other commenters supported EPA's proposal to continue to exclude facilities and equipment used in transportation and storage incident to transportation from the term ''stationary source.'' One commenter stated that doing so avoids duplication of the existing DOT regulations and continues the regulatory division of labor between EPA and DOT's Pipeline and Hazardous Safety Administration (PHMSA).

One commenter stated that transloading can take up to two months due to a variety of safety and logistics reasons, and requiring transloaders to move more quickly might increase the risks of release that the proposed rule seeks to minimize. A couple of commenters stated that the proposed definition of ''stationary source'' would conflict with DOT requirements and could create confusion.

One commenter requested that facilities be given a minimum of 72 hours before a disconnected transportation container is considered part of the stationary source. Similarly, another commenter stated that a time frame of 48 hours is too short with respect to rail transportation. The commenter asked EPA to consider eliminating the 48-hour requirement altogether, or at a minimum, extend it further for purposes of the RMP rule. The commenter noted that concerns over safety to the surrounding environment due to an extended timeframe should be mitigated by the fact that railcars designed to transport hazardous materials must meet rigorous design specifications as specified by PHMSA in 49 CFR part 179.

A couple of commenters expressed safety concerns that arise from transportation containers being exempt from the RMP rule when disconnected for less than 48 hours. One commenter requested that EPA strengthen the proposed rule to immediately trigger threshold determination for the duration that a transportation container is on-site, regardless of whether it is attached to a source of power or in motion. The commenter added that the presence of chemical railcars multiplies the risk for communities by blocking emergency evacuation routes and increasing air pollution. Another commenter stated that there are cumulative impacts and risks regardless of the length of time at a location and asked EPA to work with local community groups to best resolve the safety concern.

b. EPA Responses

EPA is not finalizing the proposed regulatory language that includes a specified number of hours that a transportation container may be disconnected from the motive power that delivered it to the site before being considered part of the stationary source. As explained in the proposed rule, the term ''storage not incident to transportation'' is currently not defined in the RMP regulations. The proposed modification sought only to apply a specific timeframe to universally establish a structure to interpret the term. EPA hoped a specified timeframe would assist regulated entities and implementing agencies to more clearly determine when a transportation container used for onsite storage must be incorporated into a facility's risk management plan. Nevertheless, after review of comments, EPA acknowledges some of the concerns with establishing a timeframe and chooses to further consider the feedback received on the proposed modification before pursuing the effort. EPA encourages regulated entities and implementing agencies to continue to rely on guidance EPA has provided to determine if a transportation container is considered a part of a stationary source.

EPA has demonstrated its intent and application of when transportation containers are and are not part of the stationary source in guidance and through court decisions. In the January 1998 amendments to the RMP rule (63 FR 640),[114] the Agency explained that EPA considers a container to be in transportation as long as it is attached to the motive power that delivered it to the site (*e.g.,* a truck or locomotive). If a container remains attached to the motive power that delivered it to the site, even after a facility accepts delivery, it would be considered as still in transportation, and the contents would not be subject to threshold determination. Additionally, EPA's guidance indicates that transportation containers used for storage which are not incident to transportation and transportation containers connected to equipment at a stationary source are considered part of the stationary source. Transportation containers that have been unhooked from the motive power that delivered them to the site (*e.g.,* truck or locomotive) and left on a stationary source's site for short-term or long-term storage are part of the stationary source.[115]

Since EPA's proposal, courts have also spoken to this issue. In February 2023, the U.S. Eastern District Court of Washington ruled in favor of the U.S. against Multistar Industries regarding RMP applicability to railcars used for stationary storage. The Court determined that railcars containing trimethylamine (TMA) in 2017 in Othello, WA, were used as storage outside the scope of transportation.[116] The TMA-containing railcars sat for days or weeks before the TMA was eventually transloaded into trucks for transfer to the customer. Additionally, in 2017, the NC Department of Air Quality succeeded against Aberdeen Carolina & Western Railway in demonstrating that EPA's longstanding

[114] *https://www.govinfo.gov/content/pkg/FR-1998-01-06/pdf/98-267.pdf.*

[115] *https://www.epa.gov/sites/default/files/2013-10/documents/chap-01-final.pdf* (page 1–5).

[116] *United States* v. *Multistar Indus. Inc.,* No. 2:21–cv–00262–TOR, 2023 WL 1802387 (E.D. Wash. Feb. 7, 2023).

interpretation of the term ''stationary source'' includes railcars disconnected from locomotive power and stored for extended periods of time. In that case, between 2012 and 2016, in Star, NC, railcars containing butane were stored on tracks awaiting placement at a nearby terminal for up to 360 days.[117]

5. Retail Facility Exemption

a. Comments

Several commenters opposed EPA's proposed changes to the definition of ''retail facility.'' A couple of commenters contended that the proposed changes to the definition lack justification. One of the commenters said that EPA failed to: (1) Provide any support for its assertion that owners and operators of facilities storing propane or other flammable substances are unclear how to determine whether they qualify as retail facilities, (2) provide any information to suggest that the current definition creates safety concerns, and (3) cite enforcement concerns at facilities claiming to be retail facilities.

One commenter urged EPA to use the retail facility definition used for the RMP and OSHA PSM standard, which has been in place for a long time and is well understood by the industry and enforceable by the agencies. A couple of commenters urged EPA to maintain its existing definition of a retail facility, which is consistent with the definition set forth in the Fuels Regulatory Relief Act and OSHA PSM standard enforcement guidance and interpretations.

A couple of commenters recommended that, if EPA moves forward to adjust the definition of retail facility, the Agency should provide businesses and/or facilities with the option of selecting either fiscal year or calendar year when determining annual income from direct sales to end users. Similarly, another commenter recommended changing ''calendar year'' to ''fiscal year'' to facilitate the income calculation for those companies whose fiscal year may not coincide with the calendar year.

b. EPA Responses

EPA disagrees that the proposed changes to the definition of ''retail facility'' lack justification. With the current definition, the period of sales to end users is unclear; it lacks a definite time frame in which to calculate whether more than one-half of the facility's direct sales are to end users. Specifying a definite period of time eliminates this uncertainty and allows owners and operators to determine more accurately whether regulated substances in a process are subject to the RMP provisions. It also may reduce the amount of sales documentation that the owner or operator of a regulated facility must provide to establish its status as a retail facility. EPA is finalizing the ''one year of sales activity'' amendment because the Agency believes it captures the seasonality of propane sales at propane distribution facilities.

EPA disagrees with comments arguing that EPA's proposed definition would be inconsistent with OSHA's PSM regulations. EPA has coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification to the RMP regulations does not create conflicts with the requirements of the OSHA PSM. EPA believes that the provisions it proposed and is finalizing are compatible and do not conflict with the prevention provisions of OSHA's PSM regulations.

In response to comments recommending that EPA adjust the definition to provide facilities the option of selecting either fiscal year or calendar year, EPA agrees with this suggestion and is adopting it in the final rule. The Agency believes this option provides flexibility in using records in the configuration that may already exist at facilities.

6. RAGAGEP Gap Analysis

a. Comments

Many commenters expressed opposition to EPA's proposed RAGAGEP gap analysis provisions. One commenter stated that the existing RMP regulations already address gaps in RAGAGEP through the PSI requirement in 40 CFR 68.65(d)(3). Some commenters stated that conducting a gap analysis of RAGAGEP has no safety benefits. Another commenter contended that the proposal is an unnecessary intrusion into internal practices of a facility. The commenter added that, because EPA should not require disclosure of decisions not to implement RAGAGEP recommendations, there is no need to provide specific categories for reporting that information publicly.

Several commenters stated that requiring facilities to include this information in their risk management plans would result in unnecessary costs on facilities. A few commenters noted that EPA's failure to consider costs in the RIA deprives the public of an opportunity to assess the full costs and benefits of the proposal. One commenter stated that EPA provided no reasonable explanation for its proposed RAGAGEP requirements, nor did it consider the cost, including resources that may be diverted because of this paperwork exercise, or benefits of the requirement in the RIA.

One commenter noted that the proposed gap analysis provision ignores several practical difficulties in implementation, such as how facilities are to identify the most current version of applicable RAGAGEP, how they are to account for non-mandatory RAGAGEP provisions in the analysis, and how this analysis can be completed in a timely manner. The commenter added that the proposed requirement ignores existing obligations to determine and document that equipment designed and constructed is in accordance with RAGAGEP.

Some commenters said that the RAGAGEP analysis is ill-suited for the PHA team to perform. One commenter pointed out that industry standards are locked into place once a facility is constructed and each facility is designed, engineered, and built according to the standards of that time. The commenter added that in some cases it would be impossible to document that equipment, which may be 20 or 30 years old, complies with RAGAGEP when RAGAGEP continually changes.

A couple of commenters stated that the proposed gap analysis provision encroaches on OSHA's PSM regulation. Some commenters pointed out that EPA adopted their regulation verbatim from OSHA's PSM regulation, and OSHA has made clear that its regulations require the verification of safe equipment, not a continual review of RAGAGEP. Several commenters said that EPA did not explain how the proposed gap analysis provision would work in tandem with OSHA regulation, which the proposal fails to repeal or revise. One of the commenters added that ignoring existing regulations is arbitrary government action.

b. EPA Responses

In response to comments that EPA provided no reasonable explanation for the requirement, there would be difficulty in implementing the provision, and costs for the requirement were not considered, EPA notes that this RAGAGEP gap analysis is already expected under 40 CFR 68.65(d)(2) and (3) for Program 3 processes. EPA notes this PHA modification merely clarifies when facilities must, at minimum, conduct or review previous analyses when determining their compliance

[117] *Aberdeen Carolina & Western Railway* v. *NC Dept of Air Quality, Final Decision on Summary Judgment,* State of North Carolina, County of Montgomery, 16 EHR 07190, May 22, 2017.

with 40 CFR 68.65(d)(2) and (3). Therefore, EPA does not believe that the Agency must consider and assess the costs of this provision in the RIA.

As indicated in a Frequently Asked Question,[118] EPA expects owners and operators to regularly review new and updated RAGAGEP applicable to their industry to determine where safety gaps exist within their current process. If the updated document explicitly provides that new clauses or requirements are retroactive, those updates are relevant to determining whether the owner or operator's practice continues to conform to RAGAGEP per 40 CFR 68.65(d)(2). Where RAGAGEP are updated to be more protective, but are not explicitly retroactive, per 40 CFR 68.65(d)(3), the owner or operator should thoroughly evaluate how their process could still be considered safe amid new industry knowledge. Simply indicating that a process incident has yet to occur is an inappropriate evaluation for choosing not to adhere to updated RAGAGEP, especially considering changes to RAGAGEP may result from industry accidents, industry operating experience, and improved understanding of existing and newly recognized hazards. Oftentimes it will be difficult for the owner or operator to document equipment is designed, maintained, inspected, testing, and operating in a safe manner when there is extensive industry knowledge that indicates aspects of older process operations are no longer safe.

Evaluation of updated RAGAGEP already is an RMP requirement, as shown in enforcement actions against facilities not complying with this provision. For example, in 2022, EPA took an enforcement action against a refinery in Hawaii that failed to comply with the latest versions of applicable refining industry standards, API Recommended Practice 941, ''Steels for Hydrogen Service at Elevated Temperatures'' (8th edition, February 2016), and 581, ''Risk Based Inspection'' (3rd edition, April 2016).[119] In February 2021, EPA also took an enforcement action against a seafood processing facility in Massachusetts that failed to comply with the latest version (at that time) of an applicable ammonia refrigeration industry standard, International Institute of Ammonia Refrigeration (IIAR) 2–2014, ''Safe Design of Closed-Circuit Ammonia Refrigeration Systems.'' [120] In both cases, the processes at these facilities were built prior to the updated RAGAGEP cited.

EPA disagrees that the RAGAGEP analysis is ill-suited for the PHA team to perform. PHA teams should include staff who are aware of industry design standards. The PHA team requirement under 40 CFR 68.67(d) specifies that the PHA shall be performed by a team with expertise in engineering and process operations, and EPA expects an expert to be one that has knowledge of current industry standards. Additionally, industry trade associations are likely to ease the burden on facilities by identifying which of their current RAGAGEP should be broadly applied to the industry, regardless of when the process was designed. For example, the ammonia refrigeration industry has already done so, specifically in the ANSI/IIAR Standard 9–2020, ''American National Standard for Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems.''

In response to comments that the provisions encroach on OSHA's PSM regulations, EPA disagrees. This new PHA requirement is meant to complement OSHA's equivalent requirement in 29 CFR 1910.119(d)(3)(iii) and provide a framework for undertaking the analysis. While EPA favors consistency with OSHA's PSM standard, EPA must also ensure compliance with the CAA. CAA section 112(r)(1), 42 U.S.C. 7412(r)(1), Purpose and general duty, states that, ''It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance.'' Congress further clarified in legislative history that it intended facility owners and operators to implement all feasible means to reduce the threat of death, serious injury, or substantial property damage to satisfy the requirements of the GDC.[121] Obligations under the regulatory program authorized by CAA section 112(r)(7) build upon those under the general duty rather than undercut it. Accordingly, using the RMP regulations to permanently lock into place obsolete or out-of-date RAGAGEP is inconsistent with the purpose and intent of the CAA.

IX. Compliance Dates

The initial RMP rule applied three years after promulgation of the rule on June 20, 1996, which is consistent with the last sentence of CAA section 112(r)(7)(B)(i). The statute does not directly address when amendments should become applicable. The provisions of this action modify terms of the existing rule, and, in some cases, clarify existing requirements.

A. Summary of Proposed Rulemaking

EPA proposed modifications to 40 CFR 68.10 to establish compliance dates for an owner or operator to comply with the revised rule provisions as follows:

- Require regulated sources to comply with new STAA, incident investigation root cause analysis, third-party compliance audit, employee participation, emergency response public notification and exercise evaluation reports, and information availability provisions, unless otherwise stated, three years after the effective date of the final rule (*i.e.,* three years after the FR effective date).
- Require regulated sources to comply with the revised emergency response field exercise frequency provision by March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and August 31, 2022, in accordance with 40 CFR 68.96(b)(1)(ii).
- Allow regulated sources one additional year (*i.e.,* four years after the effective date of the final rule) to update and resubmit risk management plans to reflect new and revised data elements.

B. Summary of Final Rule

EPA is finalizing the compliance dates as proposed with the following modification:

- Adding a compliance date to 40 CFR 68.10 to require standby or backup power for air monitoring and control equipment by three years after the effective date of the final rule (*i.e.,* three years after the effective date of this action as provided in the **Federal Register**).

C. Discussion of Comments and Basis for Final Rule Provisions

1. General Comments

a. Comments

One commenter expressed support for the compliance dates proposed by EPA. Another commenter recommended that the compliance period under the

[118] *https://www.epa.gov/rmp/complying-process-safety-information-psi-resulting-new-and-updated-recognized-and-generally.*

[119] *https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Filings/F8CDEF8A6F344043852588A90070FA45/$File/Par%20Hawaii%20Refining%20(CAA112R-09-2022-0008)%20-%20Served.pdf.*

[120] *https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Filings/0D26DA8B081A5400852586700634AB2/$File/EPCRA-01-2021-0037%20and%20CAA%20-01-2021-0038%20ORPEL%20CAFO%20Respondent%20Signed-RJO-Signed02-17-21%20(002).pdf.*

[121] S. Rep. 101–228 at 209, 1990 U.S.C.C.A.N. 3385, 3595 (1989).

proposed rule be shortened to two years, at least for the emergency response public notification and exercise evaluation reports, employee participation, and information availability provisions. The commenter added that statutory language reflects Congress's intent that EPA ensure adequate safeguards are promptly put in place to protect workers and surrounding communities from releases of dangerous chemicals. The commenter further stated that EPA's proposal should contain shorter compliance deadlines as compared to the 1996 RMP rule because the proposed rule is not as extensive as developing a full RMP program. Another commenter opposed allowing companies three years after the effective date of the proposed rule to comply. The commenter stated that this period is too long, given that most companies are already complying with an existing version of the RMP rule. The commenter suggested a one-year timeline is most appropriate.

Several commenters stated that there are too many proposed changes to accomplish in three years and asked EPA to extend the compliance deadlines to five years after the effective date of the proposed rule. The commenter stated that to the extent that EPA intends to rely on forthcoming guidance in interpreting and enforcing the new RMP provisions, it is imperative that these new requirements not take effect until at least three years after the relevant guidance is issued, instead of three years after the effective date of the final rule, as EPA has proposed. One commenter, who objected to the effective dates in the proposed rule and said they are too restrictive, said EPA failed to meet its CAA obligation to set RMP effective dates in a manner that assures compliance as ''expeditiously as practicable.''

b. EPA Responses

EPA disagrees that the compliance dates for some or all provisions should be shortened to one or two years or should be lengthened to five years or three years after guidance is issued. The Agency believes there is a good balance with three years as the compliance date for most new provisions while also assuring compliance as expeditiously as practicable. Moreover, the initial 1996 RMP rule required compliance per the statute within three years. EPA believes the provisions finalized in this rule are not as extensive as developing a full RMP program. Nevertheless, time is needed for facility owners and operators to understand the revised rule; train facility personnel on the revised provisions; learn new investigation techniques, as appropriate; research safer technologies; arrange for emergency response resources; incorporate changes into their RMPs; and establish a strategy to notify the public that certain information is available upon request. This time is necessary to achieve compliance with the new provisions because as a performance-based rule, EPA has not specified how facilities apply these provisions to manage and improve process safety at their facility, whether it involves conforming to minimum standards, such as codes, or trying to reduce risk to as low as reasonably practical, or whether it uses qualitative or quantitative assessments. Furthermore, EPA intends to publish guidance for certain provisions, such as STAA, root cause analysis, third-party audits, and employee participation, etc. Once these materials are complete, owners and operators can have time to familiarize themselves with the new materials if needing assistance in applying the provisions to improve process safety. EPA expects to develop and release this information approximately one year after this final rule. However, most provisions for a source are a site-specific determination, so EPA expects all regulated RMP facilities to be successful in beginning to address the provisions immediately.

2. Safer Technologies and Alternatives Analysis

One commenter pointed out that the effective date for the STAA requirement would disrupt PHA cycles. The commenter stated that the proposed STAA deadline is impracticable for facilities scheduled to complete their PHA update and re-validation any time after August 1, 2021. The commenter requested that EPA modify the effective date to perform a STAA as part of the next-scheduled PHA update and re-validation that occurs any time after three years from EPA's issuance of the intended STAA guidance or the final rule's effective date, whichever is later.

EPA disagrees with commenters and is finalizing a three-year compliance date for the STAA evaluation and IST/ISD practicability assessment. Sources subject to this provision are among the largest and most complex sources regulated under 40 CFR part 68, and therefore PHAs and PHA updates and revalidations at these sources typically require a significant level of planning. While PHA updates are normally done at five-year intervals, the Agency recognizes that some sources may be far enough along with their PHAs that they will not be able to schedule their STAAs as part of their PHAs. Such sources have the option of not performing STAA as part of their PHA so long as they perform a STAA within 3 years of the effective date of the final rule. Considering updates or revalidations to the initial STAA activities will likely require less effort, the Agency expects many of these sources will later incorporate further STAA updates on their normal PHA update schedule. Regarding the STAA safeguard implementation provision, since implementation (of at least one passive measure, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure) is required each PHA cycle, EPA expects implementation to be commenced within that cycle and scheduled for completion as soon as practicable.

3. Incident Investigation Root Cause Analysis

EPA did not receive any comments specific to the three-year compliance date for incident investigation root cause analysis. Therefore, EPA is finalizing the date for this provision, as proposed. The Agency continues to rely on the rationale expressed in the proposed rulemaking (87 FR 53606).

4. Third-Party Compliance Audits

EPA did not receive any comments specific to the three-year compliance date for third-party compliance audits. Therefore, EPA is finalizing the date for this provision, as proposed. The Agency continues to rely on the rationale expressed in the proposed rulemaking (87 FR 53606).

5. Employee Participation

EPA did not receive any distinct comments specific to this issue other than as a general comment. Therefore, EPA is finalizing a three-year compliance date for this provision, as proposed. The Agency continues to rely on the rationale expressed in the proposed rulemaking (87 FR 53606).

6. Emergency Response

Public Notification. Regarding the community public notification system requirements, a commenter said they will take more than three years to implement because it will be a significant undertaking requiring involvement of and coordination with several different parties.

EPA disagrees with commenters that this provision will take longer than three years to implement. This provision is for facility owners and operators to work with the local responders to ensure that, during a

release, a notification system is in place that will notify the public of the impending situation. EPA expects the partnership to occur at least during annual coordination discussions under 40 CFR 68.93. Under 40 CFR 68.93, owners and operators are required to annually coordinate response needs with local emergency planning and response organizations to determine how the facility is addressed in the community emergency response plan, among other things. A component of the community emergency response plan is public notification of chemical releases; therefore, it is expected that this component will be discussed and documented by the facility owner or operator as part of the annual coordination obligations. Therefore, EPA is finalizing the 3-year compliance date as proposed.

Field Exercises. A couple of the commenters suggested that EPA speed up compliance because 10 years is too long to wait for essential emergency planning, especially in communities with multiple RMP facilities. One commenter noted that five- to ten-year deadlines allow more time than necessary to comply and would allow another generation of children to grow up without even the protection of a basic emergency response exercise at the facility near them.

EPA disagrees that field exercises should be required on an annual, biennial, or triennial basis. Requiring field exercises to be held at shorter minimum frequencies, such as these would significantly increase compliance costs to both regulated facilities and local responder agencies. Such an approach would discourage the participation of local emergency responders in field exercises, which is voluntary under the RMP rule. Additionally, table-top exercises of the emergency plan have value for protecting the nearby community, and these occur every three years. The community would not be without a type of ''basic emergency response exercise.'' Therefore, EPA is finalizing the compliance date for owners or operators of sources to have planned, scheduled, and conducted their first field exercise by March 15, 2027.

Exercise Evaluation Reports. EPA did not receive any comments specific to the three-year compliance date for exercise evaluation reports other than as a general comment. Therefore, EPA is finalizing the date for this provision, as proposed. The Agency continues to rely on the rationale expressed in the proposed rulemaking (87 FR 53606).

7. Information Availability

A couple of commenters stated EPA's proposal to delay information access for 45 days after a request, and to require compliance after three years, is unlawful and arbitrary. These commenters stated that community members need information now—not three years from now—and that 45 days is far too long for a community member to have to wait for basic hazard information. The commenters also stated that EPA has failed to justify these delays when the provision would simply require a facility to provide only a portion of the information it already regularly reports to EPA itself, and that EPA has failed to show three years is the most expeditious compliance date practicable, or that three years is required to implement this provision.

EPA disagrees with these commenters and is finalizing a three-year compliance date for the information availability provision. This means that three years after the effective date of the rule, the facility owner or operator must have notifications in place to inform the public that information specified in 40 CFR 68.210(b) is available upon request. EPA believes that this timeframe is needed to allow facility staff an opportunity to determine the best method for providing notifications to the public, to assemble and format information, including securing appropriate language translation services, and to prepare to respond to information requests. EPA is therefore finalizing the three-year compliance date for the information availability provision.

8. RMP Update

A couple of commenters urged EPA to shorten the 4-year timeline for facilities to submit updated RMPs.

EPA disagrees with commenters and is finalizing the four-year compliance date for this provision, as proposed. This timeframe will allow owners and operators an opportunity to begin to comply with revised rule provisions prior to certifying compliance in the RMP. Additionally, the Agency will revise its online RMP submission system, RMP*eSubmit, to include the additional data elements, and sources will not be able to update RMPs with new or revised data elements until the submission system is ready. Also, once it is ready, allowing an additional year for sources to update RMPs will prevent potential problems with thousands of sources submitting updated RMPs on the same day.

9. Hazard Review Amplifications and Other Areas of Technical Clarification

a. Comments

One commenter asked EPA to clarify the required date for compliance with the natural hazard assessment and the power loss evaluations. The commenter asserted that this should occur as expeditiously as practicable, within one year after the effective date of the final rule, and facilities should be directed to report that they have completed these assessments soon after completion. Another commenter supported requiring backup power for air pollution control and monitoring equipment associated with the prevention and detection of accidental releases and suggested that EPA specify an appropriate compliance deadline, specifically no later than three years from the date of promulgation.

One commenter pointed out that EPA's proposal would require facilities to comply with the proposed revisions in the PHAs upon the effective date of the rule. The commenter said that the deadline is infeasible because it would take years to address the host of expansive new PHA requirements that require analysis of a wide range of issues. Accordingly, the commenter asked EPA to clarify that the deadline for any new requirements is when the PHA becomes due as part of its five-year cycle, or three years after the effective date of the final rule, whichever comes later. Referring to the natural hazards assessment, another commenter requested an implementation date of no sooner than five years after the effective date of the final rule.

b. EPA Responses

EPA notes that components of the hazards evaluation amplifications and the other areas of technical clarification in sections V.A. and VIII of this preamble impose no new requirements on facilities because they codify existing industry practice and re-emphasize current RMP requirements and do not change the meaning of the RMP rule. Compliance for these provisions is therefore already required and should be updated on their normal schedule. For example, an evaluation of natural hazards on a process should already be occurring as part of the hazard review (40 CFR 68.50) or PHA (40 CFR 68.67) and should be updated at least once every 5 years. Additionally, any update to the RMP required by 40 CFR 68.190 should continue to occur as normal and should include updating the RMP with current information required by Subpart G. The intent of the amplifications and clarifications discussed in this final rule are to simplify implementation for

facilities, thereby improving chemical safety.

In response to comments asking EPA to clarify the compliance date for requiring standby or backup power for continuous operation of air monitoring equipment associated with prevention and detection of accidental releases from covered processes, EPA has adopted the three-year compliance date and has amended the regulatory language. EPA believes three years will allow time to evaluate and secure standby or backup power needs for air monitoring equipment and assure their safe operation.

X. Statutory and Executive Orders Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'', as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA, submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention Final Rule'' (Docket ID Number EPA–HQ–OLEM–2022–0174), is also available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule will be submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2725.02. 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.

EPA believes that the RMP regulations, originally promulgated on June 20, 1996, codified as 40 CFR part 68, and later amended, have been effective in preventing and mitigating chemical accidents in the United States. However, EPA believes that revisions will likely further protect human health and the environment from chemical hazards through advancement of process safety based on lessons learned. The revisions in this final rule are a result of reviewing the existing RMP regulations and information gathered from the 2021 listening sessions. State and local authorities will use the information in RMPs to modify and enhance their community response plans. The agencies implementing the RMP rule use RMPs to evaluate compliance with 40 CFR part 68 and to identify sources for inspection because they may pose significant risks to the community. Citizens may use the information to assess and address chemical hazards in their communities and to respond appropriately in the event of a release of a regulated substance. These revisions are made under the statutory authority provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)).

Respondents/affected entities: The industries that are likely to be affected by the requirements in the regulation fall into numerous NAICS codes. The types of stationary sources affected by the rule range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources that use RMP-regulated substances. Among the stationary sources potentially affected, the Agency has determined that 2,636 are regulated private sector small entities and 630 are small government entities.

Respondent's obligation to respond: Mandatory ((CAA sections 112(r)(7)(B)(i) and (ii), CAA sections 112(r)(7)(B)(iii), 114(c), CAA 114(a)(1))).

Estimated number of respondents: 11,740.

Frequency of response: Occasional.

Total estimated burden: 1,190,991 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $126,796,471 (per year); includes $12,413,710 annual operations and maintenance costs and $78,400 annual capital 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, the Agency 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. The small entities subject to the requirements of this action are small businesses and small governmental entities. The Agency has determined that among the 2,636 potentially regulated private sector small entities so impacted, 2,393, or 90.8 percent, may experience an impact of less than one percent with an average small entity cost of $72,525; 167, or 6.3 percent, may experience an impact of between 1 and 3 percent of revenues with an average small cost entity of $629,271; and 75, or 2.8 percent, may experience an impact of greater than 3 percent with an average small entity cost of $1,083,823. The industry sectors of Farm Supplies Merchant Wholesalers and Farm Product Warehousing and Storage had the most entities potentially affected, with 146 and 96 entities, respectively. Within the Farm Supplies Merchant Wholesalers sector, the Agency determined that only 8 of the 146 small entities (6 percent of small entities) will experience impacts of between 1 and 3 percent of revenues and only 2 small entities (1 percent of small entities) will experience impacts of more than 3 percent of revenue. Within the Farm Product Warehousing and Storage sector, the Agency determined that only 5 of the 96 small entities (5 percent of small entities) will experience impacts of between 1 and 3 percent of revenues and no small entities will experience impacts of more than 3 percent of revenue.

Among the 630 small government entities potentially affected, the minimum cost any entity will incur is $2,000; 365, or 58 percent, would incur costs ranging from $2,000 to $3,000; 248, or 39 percent, will incur costs ranging from $3,000 to $10,000; and 17, or 3 percent, will incur costs greater than $10,000. EPA estimated that for the rule to have a larger than 1 percent impact on the government entity with the largest cost impact, the entity would need to have revenue of less than $120 per resident. For the rule to have a larger than 1 percent impact on the smallest government entity identified in the data, the entity would need to have revenue of less than $650 per resident.

Details of these analyses are presented in Chapter 8 of the RIA, which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared a written statement required under section 202 of UMRA that is included in the RIA and briefly summarized here.

Over the 23 years of implementing the RMP program and, most recently through E.O. 13990 listening sessions, meetings, and public hearings, EPA has engaged States and local communities to discuss chemical safety issues. In the two E.O. 13990 listening sessions and three proposal hearings, held between July 2021 and September 2022, States and local communities identified lack of facility coordination with local responders and the community as a key barrier to successful local community preparedness. Additionally, EPA has held consultations with States and local communities through participation in the National Association of SARA Title III Program Officials (NASTTPO) annual meetings to discuss key issues related to chemical facility and local community coordination and the areas of the RMP regulations which need to be modernized to facilitate this coordination and improve local emergency preparedness and prevention. Key priority options discussed with NASTTPO States and local communities included improving emergency response coordination between RMP facilities and LEPCs/first responders.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. On April 7, 2022, September 1, 2022, and September 5, 2023, EPA met with small governments concerning the regulatory requirements that might affect them. Also, through the May 28, 2021, notice of virtual public listening sessions; request for public comment (86 FR 28828) and August 31, 2022, NPRM (87 FR 53556), EPA sought feedback from governmental entities while formulating the revisions in this action.

With regard to section 205 of UMRA, the Agency considered finalizing the regulatory requirements as proposed as well as the regulatory alternatives considered in Chapter 7 of the RIA. However, none of the alternative options successfully fulfilled the objectives of the rule, which seek to prevent or reduce the impacts of RMP accidents on communities near facilities. These objectives are accomplished by promoting prevention generally and through targeted enhanced measures at the most accident-prone facilities, which historically have had a disproportionate share of accidents and the costliest accidents. Some of these same facilities have widely known safer alternatives available. The objectives are also accomplished by enhancing emergency response training and planning through better information access and exchange among the facility, emergency responders, and the community potentially exposed to accidents. A market failure results when RMP accidents impose burdens on nearby communities. Firms do not have an appropriate level of incentive to prevent and/or mitigate these external costs. The Agency believes that the rule objectives to prevent or reduce the impacts of accidents on communities near facilities are best achieved by the selected provisions for this final rule, particularly, implementation of process safeguards or IST/ISD to prevent accidents and allowing a wider segment of the public potentially affected by accidents to access emergency preparedness information.

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 has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt tribal law. There are approximately 260 RMP facilities located on tribal lands. Tribes could be impacted by the final rule either as an owner or operator of an RMP-regulated facility or as a Tribal government when the Tribal government conducts emergency response or emergency preparedness activities under EPCRA.

EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. On August 31, 2022, EPA sent a notification letter via email to Tribal leaders of all 574 federally recognized Tribes to inform them of the proposed rulemaking and to provide an opportunity to comment on the action through a Tribal consultation meeting on September 21, 2022. Approximately 4 Tribal attendees participated in the meeting. During the consultation meeting, EPA presented information on the proposed action. A few Tribes provided comments during the webinar. No Tribes requested government to government consultation with EPA following the meeting. Additionally, EPA had an open docket for public comment on the proposal from August 31–October 31, 2022. The Agency did not receive any comments from federally recognized Tribes. The notification letter and a list of attendees at the meeting is provided in the docket for this action.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. EPA believes that the revisions to the RMP regulations made by this final rule will further protect human health, including the health of children, through advancement of process safety. However, EPA's Policy on Children's Health applies to this action.

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 is not anticipated to have notable impacts on emissions, costs, or energy supply decisions for the affected electric utility industry.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns.

EPA conducted an EJ analysis using the Agency's EJ screening tool, EJSCREEN and the U.S. Census Bureau's American Community Survey (ACS). The EJ analysis shows that historically underserved and overburdened populations live within proximity to RMP-regulated facilities and thus are at greater risk than other populations. The analysis also found evidence that regulated facilities are disproportionately located within historically underserved and overburdened communities. Thus, EPA recognizes that accidental releases of regulated chemicals from facilities regulated by this action will likely pose disproportionate risks to historically marginalized communities. However, EPA has concluded that the regulatory requirements will advance just treatment of those populations by reducing the disproportionate damages from accidental releases that RMP-regulated facilities might otherwise inflict on those populations. EPA's full EJ analysis is documented in ''Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention Final Rule,'' which is available in the docket.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with EJ concerns. Because populations living closer to facilities are more likely to be exposed if an accidental release at an RMP facility occurs, these releases pose a greater risk to these communities. Therefore, the benefits of this regulation will include reduced risk for historically underserved and overburdened populations.

EPA additionally identified and addressed EJ concerns by holding virtual public listening sessions on June 16 and July 8, 2021, and had an open docket for public comment (86 FR 28828). In the request for public comment, the Agency asked for information on the adequacy of revisions to the RMP regulations completed since 2017, incorporating consideration of climate change risks and impacts into the regulations, and expanding the application of EJ in the RMP. Following publication of the proposed rule, EPA held three public hearings (September 26, 27, and 28, 2022) and had a 60-day open public comment period. Participants in the virtual public listening sessions and hearings included a wide range of stakeholders including environmental and community groups, individual regulated facilities, industry groups, local and State governments, Federal agencies, and private citizens. Information collected through oral testimonies and written comments from the listening sessions and hearings respectively informed the proposed and final rule.

The information supporting this E.O. review is contained in Chapter 9 of the RIA, which is 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 meets the criteria set forth in defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 68, of the Code of Federal Regulations is amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

■ 1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

Subpart A—General

■ 2. Amend § 68.3 by:

■ a. Adding in alphabetical order the definitions for ''Active measures,'' ''Inherently safer technology or design,'' ''Natural hazard,'' ''Passive measures,'' ''Practicability,'' and ''Procedural measures'';

■ b. Revising the definition of ''Retail facility''; and

■ c. Adding in alphabetical order the definitions for ''Root cause'' and ''Third-party audit''.

The additions and revisions read as follows:

§ 68.3 Definitions.

* * * * *

Active measures mean risk management measures or engineering controls that rely on mechanical or other energy input to detect and respond to process deviations. Examples of active measures include alarms, safety instrumented systems, and detection hardware (such as hydrocarbon sensors).

* * * * *

Inherently safer technology or design means risk management measures that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify covered processes in order to make accidental releases less likely, or the impacts of such releases less severe.

* * * * *

Natural hazard means meteorological, climatological, environmental or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change. Examples of such hazards include, but are not limited to, avalanche, coastal flooding, cold wave, drought, earthquake, hail, heat wave, hurricane, ice storm, landslide, lightning, riverine flooding, strong wind, tornado, tsunami, volcanic activity, wildfire, and winter weather.

* * * * *

Passive measures mean risk management measures that use design features that reduce either the frequency or consequence of the hazard without human, mechanical, or other energy input. Examples of passive measures include pressure vessel designs, dikes, berms, and blast walls.

* * * * *

Practicability means the capability of being successfully accomplished within a reasonable time, accounting for environmental, legal, social, technological, and economic factors. Environmental factors would include consideration of potential transferred risks for new risk reduction measures.

Procedural measures mean risk management measures such as policies, operating procedures, training, administrative controls, and emergency response actions to prevent or minimize incidents.

* * * * *

Retail facility means a stationary source at which more than one-half of the annual income (in the previous calendar or fiscal year) is obtained from direct sales to end users or at which

more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

* * * * *

Root cause means a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems, and if applicable, in process design.

* * * * *

Third-party audit means a compliance audit conducted pursuant to the requirements of § 68.59 and/or § 68.80, performed or led by an entity (individual or firm) meeting the competency and independence requirements described in § 68.59(c) or § 68.80(c).

* * * * *

■ 3. Amend § 68.10 by:
■ a. Revising paragraph (a) introductory text;
■ b. Redesignating paragraphs (g) through (k) as paragraphs (j) through (n);
■ c. Adding new paragraphs (g) through (i); and
■ d. In newly redesignated paragraphs (j) through (l), removing the paragraph heading.

The revisions and additions read as follows:

§ 68.10 Applicability.

(a) Except as provided in paragraphs (b) through (i) of this section, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

* * * * *

(g) By May 10, 2027, the owner or operator shall comply with the following provisions promulgated on May 10, 2024:

(1) Standby or backup power for continuous operation of monitoring equipment associated with prevention and detection of accidental releases from covered processes in §§ 68.50(a)(3) and 68.67(c)(3);

(2) Third-party audit provisions in §§ 68.58(f) through (h), 68.59, 68.79(f) through (h), and 68.80;

(3) Incident investigation root cause analysis provisions in §§ 68.60(h) and 68.81(h);

(4) Safer technology and alternatives analysis provisions in § 68.67(c)(9) and (h);

(5) Employee participation provisions in §§ 68.62 and 68.83;

(6) Emergency response provisions in §§ 68.90(b) and 68.95(a); and

(7) Availability of information provisions in § 68.210(d) through (h).

(h) By March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and August 31, 2022, in accordance with § 68.96(b)(1)(ii).

(i) By May 10, 2028, the owner or operator shall comply with the risk management plan provisions of subpart G of this part promulgated on May 10, 2024.

* * * * *

Subpart C—Program 2 Prevention Program

■ 4. Amend § 68.48 by revising paragraph (b) to read as follows:

§ 68.48 Safety information.

* * * * *

(b) The owner or operator shall ensure and document that the process is designed in compliance with recognized and generally accepted good engineering practices.

* * * * *

■ 5. Amend § 68.50 by:
■ a. Revising paragraph (a)(3);
■ b. Removing the period at the end of paragraph (a)(4) and adding a semicolon in its place; and
■ c. Adding paragraphs (a)(5) and (6).

The revision and addition read as follows:

§ 68.50 Hazard review.

(a) * * *

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error including standby or emergency power systems; the owner or operator shall ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation;

* * * * *

(5) Natural hazards that could cause or exacerbate an accidental release; and

(6) Stationary source siting, including the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release consequences posed by proximity to the public and public receptors.

* * * * *

■ 6. Amend § 68.52 by:
■ a. Removing the word ''and'' at the end of paragraph (b)(7);
■ b. Removing the period at the end of paragraph (b)(8) and adding ''; and'' in its place; and
■ c. Adding paragraph (b)(9).

The addition reads as follows:

§ 68.52 Operating procedures.

* * * * *

(b) * * *

(9) Documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards.

* * * * *

■ 7. Amend § 68.58 by revising paragraph (a) and adding paragraphs (f) through (h) to read as follows:

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart, at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed. When required as set forth in paragraph (f) of this section, the compliance audit shall be a third-party audit.

* * * * *

(f) The next required compliance audit shall be a third-party audit when one or more of the following conditions applies:

(1) An accidental release meeting the criteria in § 68.42(a) from a covered process at a stationary source has occurred; or

(2) An implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of § 68.59(c).

(g)(1) If an implementing agency makes a preliminary determination that a third-party audit is necessary pursuant to paragraph (f)(2) of this section, the implementing agency will provide written notice to the owner or operator that describes the basis for this determination.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data to, and may consult with, the implementing agency on the determination. Thereafter, the implementing agency will provide a final determination to the owner or operator.

(3) If the final determination requires a third-party audit, the owner or operator shall comply with the requirements of § 68.59, pursuant to the schedule in paragraph (h) of this section.

(4) The owner or operator may appeal a final determination made by an implementing agency under paragraph

(g)(3) of this section within 30 days of receipt of the final determination. The appeal shall be made to the EPA Regional Administrator or, for determinations made by other implementing agencies, the administrator or director of such implementing agency. The appeal shall contain a clear and concise statement of the issues, facts in the case, and any relevant additional information. In reviewing the appeal, the implementing agency may request additional information from the owner or operator. The implementing agency will provide a written, final decision on the appeal to the owner or operator.

(h) The audit and audit report shall be completed as in paragraph (a) of this section, unless a different timeframe is specified by the implementing agency.

■ 8. Section 68.59 is added to subpart C to read as follows:

§ 68.59 Third-party audits.

(a) *Applicability.* The owner or operator shall engage a third party to conduct an audit that evaluates compliance with the provisions of this subpart in accordance with the requirements of this section when any criterion of § 68.58(f) is met.

(b) *Third-party auditors and auditing teams.* The owner or operator shall either:

(1) Engage a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section; or

(2) Assemble an auditing team, led by a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section. The team may include:

(i) Other employees of the third-party auditor firm meeting the independence criteria of paragraph (c)(2) of this section; and

(ii) Other personnel not employed by the third-party auditor firm, including facility personnel.

(c) *Third-party auditor qualifications.* The owner or operator shall determine and document that the third-party auditor(s) meet the following competency and independence requirements:

(1) The third-party auditor(s) shall be:

(i) Knowledgeable with the requirements of this part;

(ii) Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices; and

(iii) Trained and/or certified in proper auditing techniques.

(2) The third-party auditor(s) shall:

(i) Act impartially when performing all activities under this section;

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph (c)(2)(ii), retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans;

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2); and

(iv) Ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. For purposes of the requirement in this paragraph (c)(2)(iv), employment does not include performing or participating in third-party audits pursuant to § 68.80 or this section.

(3) The auditor shall have written policies and procedures to ensure that all personnel comply with the competency and independence requirements of this section.

(d) *Third-party auditor responsibilities.* The owner or operator shall ensure that the third-party auditor:

(1) Manages the audit and participates in audit initiation, design, implementation, and reporting;

(2) Determines appropriate roles and responsibilities for the audit team members based on the qualifications of each team member;

(3) Prepares the audit report and, where there is a team, documents the full audit team's views in the final audit report;

(4) Certifies the final audit report and its contents as meeting the requirements of this section; and

(5) Provides a copy of the audit report to the owner or operator.

(e) *Audit report.* The audit report shall:

(1) Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For third-party auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are met;

(2) Describe or incorporate by reference the policies and procedures required under paragraph (c)(3) of this section;

(3) Document the auditor's evaluation of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the owner or operator under this subpart are adequate and being followed;

(4) Document the findings of the audit, including any identified compliance or performance deficiencies;

(5) Summarize any significant revisions (if any) between draft and final versions of the report; and

(6) Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

> I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart C of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.

(f) *Third-party audit findings*—(1) *Findings response report.* As soon as possible, but no later than 90 days after receiving the final audit report, the owner or operator shall determine an appropriate response to each of the findings in the audit report, and develop a findings response report that includes:

(i) A copy of the final audit report;

(ii) An appropriate response to each of the audit report findings;

(iii) A schedule for promptly addressing deficiencies; and

(iv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary source, stating:

> I certify under penalty of law that I have engaged a third party to perform or lead an audit team to conduct a third-party audit in accordance with the requirements of 40 CFR 68.59 and that the attached RMP compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart C of 40 CFR part 68, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and

complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.

(2) *Schedule implementation.* The owner or operator shall implement the schedule to address deficiencies identified in the audit findings response report in paragraph (f)(1)(iii) of this section and document the action taken to address each deficiency, along with the date completed.

(3) *Submission to Board of Directors.* The owner or operator shall immediately provide a copy of each document required under paragraphs (f)(1) and (2) of this section, when completed, to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual, if applicable.

(g) *Recordkeeping.* The owner or operator shall retain at the stationary source, the two most recent final third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records. The requirement in this paragraph (g) does not apply to any document that is more than five years old.

■ 9. Amend § 68.60 by adding paragraph (h) to read as follows:

§ 68.60 Incident investigation.

* * * * *

(h) The owner or operator shall ensure the following are addressed when the incident in paragraph (a) of this section meets the accident history reporting requirements under § 68.42:

(1) The report shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, to an extension of time; and

(2) The report in paragraph (d) of this section shall include factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes. Root causes shall be determined by conducting an analysis for each incident using a recognized method.

■ 10. Section 68.62 is added to subpart C to read as follows:

§ 68.62 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation requirements required by this section.

(1) An annual written or electronic notice shall be distributed to employees and their representatives indicating that the plan is readily available to view, and how to access the information.

(2) Training shall be provided as often as necessary to ensure employees and their representatives, and management involved in the process, are informed of the details of the plan.

(b)(1) The owner or operator shall develop and implement a process to allow employees and their representatives to report to either or both the owner or operator and EPA unaddressed hazards that could lead to a catastrophic release, accidents covered by § 68.42(a) but not reported under § 68.195(a), and any other noncompliance with this part.

(2) The employee and their representatives may choose to report either anonymously or with attribution.

(3) When a report is made to the owner or operator, a record of the report shall be maintained for three years.

(c) The owner or operator shall provide to employees and their representatives access to hazard reviews and to all other information required to be developed under this subpart.

Subpart D—Program 3 Prevention Program

■ 11. Amend § 68.65 by revising paragraphs (a) and (d)(2) to read as follows:

§ 68.65 Process safety information.

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this part and shall keep process safety information up to date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

* * * * *

(d) * * *

(2) The owner or operator shall ensure and document that the process is designed and maintained in compliance with recognized and generally accepted good engineering practices.

* * * * *

■ 12. Amend § 68.67 by:

■ a. Revising paragraphs (c)(3) and (5);

■ b. Removing the word ''and'' at the end of paragraph (c)(6);

■ c. Removing the period at the end of paragraph (c)(7) and adding a semicolon in its place; and

■ d. Adding paragraphs (c)(8) through (10) and (h).

The revisions and additions read as follows:

§ 68.67 Process hazard analysis.

* * * * *

(c) * * *

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases and standby or emergency power systems. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.) The owner or operator shall ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation;

* * * * *

(5) Stationary source siting, including the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release consequences posed by proximity to the public and public receptors;

* * * * *

(8) Natural hazards that could cause or exacerbate an accidental release;

(9) Safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards for the following covered processes and shall meet all of the following requirements:

(i) For covered processes in NAICS codes 324 and 325, the owner or operator shall consider and document, in the following order of preference, inherently safer technology or design, passive measures, active measures, and procedural measures. A combination of risk management measures may be used to achieve the desired risk reduction.

(ii) For covered processes in paragraphs (c)(9)(ii)(A) through (C) of this section, the owner or operator shall consider and document, in the following order of preference, inherently safer technology or design, passive measures, active measures, and procedural measures. A combination of risk management measures may be used to achieve the desired risk reduction. The owner or operator shall also determine and document the practicability of the inherently safer technologies and designs considered.

The owner or operator shall include in documentation any methods used to determine practicability. For any inherently safer technologies and designs implemented, the owner or operator shall document and submit to EPA a description of the technology implemented.

(A) In NAICS codes 324 and 325, located within 1 mile of another stationary source having a covered process in NAICS code 324 or 325;

(B) In NAICS code 324 with hydrofluoric acid alkylation covered processes; and

(C) In NAICS codes 324 and 325 that have had one accident that meets the accident history reporting requirements under § 68.42 since the most recent process hazard analysis under this section.

(iii) The analysis shall be performed by a team that includes members with expertise in the process being evaluated, including at least one member who works in the process. The team members shall be documented; and

(10) Any gaps in safety between the codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.

* * * * *

(h)(1) Of the covered processes listed under paragraphs (h)(1)(i) through (iii) of this section, the owner or operator shall implement at least one passive measure at the stationary source, or an inherently safer technology or design, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure, resulting from paragraph (c)(9)(i) of this section:

(i) In NAICS codes 324 and 325, located within 1 mile of another stationary source having a covered process in NAICS code 324 or 325;

(ii) In NAICS code 324 with hydrofluoric acid alkylation covered processes; and

(iii) In NAICS codes 324 and 325 that have had one accident that meets the accident history reporting requirements under § 68.42 since the most recent process hazard analysis under this section.

(2) If no passive measures are identified or all are not practicable, and no inherently safer technology or design is implemented, then the owner or operator shall implement at least one active measure. If no active measures are identified or all are not practicable, the owner or operator shall implement at least one procedural measure.

(3) For passive and active measures not implemented, the owner or operator shall document sufficient evidence to demonstrate to the implementing agency's satisfaction that implementing the measures is not practicable and the reasons for this conclusion. A claim that implementation is not practicable shall not be based solely on evidence of reduced profits or increased costs.

■ 13. Amend § 68.69 by revising paragraph (a)(4) to read as follows:

§ 68.69 Operating procedures.

(a) * * *

(4) Safety systems and their functions, including documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards.

* * * * *

■ 14. Amend § 68.79 by revising paragraph (a) and adding paragraphs (f) through (h) to read as follows:

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart, at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed. When required as set forth in paragraph (f) of this section, the compliance audit shall be a third-party audit.

* * * * *

(f) The next required compliance audit shall be a third-party audit when one or more of the following conditions applies:

(1) An accidental release meeting the criteria in § 68.42(a) from a covered process at a stationary source has occurred; or

(2) An implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of § 68.80(c).

(g)(1) If an implementing agency makes a preliminary determination that a third-party audit is necessary pursuant to paragraph (f)(2) of this section, the implementing agency will provide written notice to the owner or operator that describes the basis for this determination.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data to, and may consult with, the implementing agency on the determination. Thereafter, the implementing agency will provide a final determination to the owner or operator.

(3) If the final determination requires a third-party audit, the owner or operator shall comply with the requirements of § 68.80, pursuant to the schedule in paragraph (h) of this section.

(4) The owner or operator may appeal a final determination made by an implementing agency under paragraph (g)(3) of this section within 30 days of receipt of the final determination. The appeal shall be made to the EPA Regional Administrator or, for determinations made by other implementing agencies, the administrator or director of such implementing agency. The appeal shall contain a clear and concise statement of the issues, facts in the case, and any relevant additional information. In reviewing the appeal, the implementing agency may request additional information from the owner or operator. The implementing agency will provide a written, final decision on the appeal to the owner or operator.

(h) The audit and audit report shall be completed as in paragraph (a) of this section, unless a different timeframe is specified by the implementing agency.

■ 15. Section 68.80 is added to subpart D to read as follows:

§ 68.80 Third-party audits.

(a) *Applicability.* The owner or operator shall engage a third party to conduct an audit that evaluates compliance with the provisions of this subpart in accordance with the requirements of this section when any criterion of § 68.79(f) is met.

(b) *Third-party auditors and auditing teams.* The owner or operator shall either:

(1) Engage a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section; or

(2) Assemble an auditing team, led by a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section. The team may include:

(i) Other employees of the third-party auditor firm meeting the independence criteria of paragraph (c)(2) of this section; and

(ii) Other personnel not employed by the third-party auditor firm, including facility personnel.

(c) *Third-party auditor qualifications.* The owner or operator shall determine and document that the third-party auditor(s) meet the following competency and independence requirements:

(1) The third-party auditor(s) shall be:

(i) Knowledgeable with the requirements of this part;

(ii) Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices; and

(iii) Trained and/or certified in proper auditing techniques.

(2) The third-party auditor(s) shall:

(i) Act impartially when performing all activities under this section;

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph (c)(2)(ii), retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans;

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2); and

(iv) Ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. For purposes of the requirement in this paragraph (c)(2)(iv), employment does not include performing or participating in third-party audits pursuant to § 68.59 or this section.

(3) The auditor shall have written policies and procedures to ensure that all personnel comply with the competency and independence requirements of this section.

(d) *Third-party auditor responsibilities.* The owner or operator shall ensure that the third-party auditor:

(1) Manages the audit and participates in audit initiation, design, implementation, and reporting;

(2) Determines appropriate roles and responsibilities for the audit team members based on the qualifications of each team member;

(3) Prepares the audit report and, where there is a team, documents the full audit team's views in the final audit report;

(4) Certifies the final audit report and its contents as meeting the requirements of this section; and

(5) Provides a copy of the audit report to the owner or operator.

(e) *Audit report.* The audit report shall:

(1) Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For third-party auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are met;

(2) Describe or incorporate by reference the policies and procedures required under paragraph (c)(3) of this section;

(3) Document the auditor's evaluation of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the owner or operator under this part are adequate and being followed;

(4) Document the findings of the audit, including any identified compliance or performance deficiencies;

(5) Summarize any significant revisions (if any) between draft and final versions of the report; and

(6) Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

> I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart D of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.

(f) *Third-party audit findings*—(1) *Findings response report.* As soon as possible, but no later than 90 days after receiving the final audit report, the owner or operator shall determine an appropriate response to each of the findings in the audit report, and develop a findings response report that includes:

(i) A copy of the final audit report;

(ii) An appropriate response to each of the audit report findings;

(iii) A schedule for promptly addressing deficiencies; and

(iv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary source, stating:

> I certify under penalty of law that I have engaged a third party to perform or lead an audit team to conduct a third-party audit in accordance with the requirements of 40 CFR 68.80 and that the attached RMP compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart D of 40 CFR part 68, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.

(2) *Schedule implementation.* The owner or operator shall implement the schedule to address deficiencies identified in the audit findings response report in paragraph (f)(1)(iii) of this section and document the action taken to address each deficiency, along with the date completed.

(3) *Submission to Board of Directors.* The owner or operator shall immediately provide a copy of each document required under paragraphs (f)(1) and (2) of this section, when completed, to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual, if applicable.

(g) *Recordkeeping.* The owner or operator shall retain at the stationary source the two most recent final third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records.

■ 16. Amend § 68.81 by adding paragraph (h) to read as follows:

§ 68.81 Incident investigation.

* * * * *

(h) The owner or operator shall ensure the following are addressed when the incident in paragraph (a) of this section meets the accident history reporting requirements under § 68.42:

(1) The report shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time; and

(2) The report in paragraph (d) of this section shall include factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes. Root causes shall be determined by conducting an analysis for each incident using a recognized method.

■ 17. Revise § 68.83 to read as follows:

§ 68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation requirements required by this section.

(1) An annual written or electronic notice shall be distributed to employees and their representatives indicating that the plan is readily available to view and how to access the information.

(2) Training shall be provided as often as necessary to ensure employees and their representatives, and management involved in the process, are informed of the details of the plan.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this part.

(c) The owner or operator shall consult with employees knowledgeable in the process and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations and findings of process hazard analyses under § 68.67(e), compliance audits under § 68.79(d), and incident investigations under § 68.81(e).

(d) The owner or operator shall provide the following authorities to employees knowledgeable in the process and their representatives:

(1) Recommend to the operator in charge of a unit that an operation or process be partially or completely shut down, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release; and

(2) Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.

(e)(1) The owner or operator shall develop and implement a process to allow employees and their representatives to report to either or both the owner or operator and EPA unaddressed hazards that could lead to a catastrophic release, accidents covered by § 68.42(a) but not reported under § 68.195(a), and any other noncompliance with this part.

(2) The employee and their representatives may choose to report either anonymously or with attribution.

(3) When a report is made to the owner or operator, a record of the report shall be maintained for three years.

(f) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this part.

■ 18. Amend § 68.85 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 68.85 Hot work permit.

* * * * *

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed.

(c) The permit shall be retained for three years after the completion of the hot work operations.

Subpart E—Emergency Response

■ 19. Amend § 68.90 by:

■ a. Revising paragraph (b)(3);

■ b. Removing the word ''and'' at the end of paragraph (b)(4);

■ c. Removing the period at the end of paragraph (b)(5) and adding ''; and'' in its place; and

■ d. Adding paragraph (b)(6).

The revision and addition read as follows:

§ 68.90 Applicability.

* * * * *

(b) * * *

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response, including providing timely data and information detailing the current understanding and best estimates of the nature of the accidental release. The owner or operator may satisfy the requirement in this paragraph (b)(3) through notification mechanisms designed to meet other Federal, State, or local notification requirements, provided the notification meets the requirements of this paragraph (b)(3), as appropriate;

* * * * *

(6) The owner or operator maintains and implements, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases and partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release. Documentation of the partnership shall be maintained in accordance with § 68.93(c).

■ 20. Amend § 68.95 by revising paragraphs (a)(1)(i) and (c) to read as follows:

§ 68.95 Emergency response program.

(a) * * *

(1) * * *

(i) Procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases, including partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release. Documentation of the partnership shall be maintained in accordance with § 68.93(c);

* * * * *

(c) The emergency response plan developed under paragraph (a)(1) of this section shall include providing timely data and information detailing the current understanding and best estimates of the nature of the release when an accidental release occurs and be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. The owner or operator may satisfy the requirement of this paragraph (c) through notification mechanisms designed to meet other Federal, State, or local notification requirements, provided the notification meets the requirements of this paragraph (c), as appropriate. Upon request of the LEPC or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

■ 21. Amend § 68.96 by revising paragraphs (b)(1)(i) and (b)(3) to read as follows:

§ 68.96 Emergency response exercises.

* * * * *

(b) * * *

(1) * * *

(i) *Frequency.* As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall consult with these officials to establish an appropriate frequency for field exercises, and shall conduct a field exercise before March 15, 2027, and at a minimum at least once every ten years thereafter, unless the appropriate local emergency response agencies agree in writing that such frequency is impractical. If local emergency response agencies so agree, the owner or operator shall consult with local emergency response officials to establish an alternate appropriate frequency for field exercises.

* * * * *

(3) *Documentation.* The owner or operator shall prepare an evaluation report within 90 days of each field and tabletop exercise. The report shall include a description of the exercise scenario, names and organizations of each participant, an evaluation of the exercise results including lessons

learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.

* * * * *

Subpart G—Risk Management Plan

■ 22. Amend § 68.160 by:
■ a. Removing the semicolons at the ends of paragraphs (b)(1) through (11) and adding periods in their place;
■ b. Removing ''; and'' at the end of paragraph (b)(12) and adding a period in its place;
■ c. Removing the semicolons at the ends of paragraphs (b)(13) through (19) and adding periods in their place; and
■ d. Adding paragraph (b)(22).

The addition reads as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(22) Method of communication and location of the notification that chemical hazard information is available to the public residing, working, or spending significant time within 6 miles of the stationary source, pursuant to § 68.210(d).

■ 23. Amend § 68.170 by:
■ a. Removing the word ''and'' at the end of paragraph (e)(5);
■ b. Removing the period at the end of paragraph (e)(6) and adding ''; and'' in its place;
■ c. Adding paragraph (e)(7); and
■ d. Revising paragraph (i).

The addition and revision read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(e) * * *

(7) Recommendations declined from natural hazard, power loss, and siting hazard evaluations and justifications.

* * * * *

(i) The date of the most recent compliance audit; the expected date of completion of any changes resulting from the compliance audit and identification of whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.58 and 68.59; and findings declined from third-party compliance audits and justifications.

* * * * *

■ 24. Amend § 68.175 by:
■ a. Removing the word ''and'' at the end of paragraph (e)(5);
■ b. Removing the period at the end of paragraph (e)(6) and adding a semicolon in its place;
■ c. Adding paragraphs (e)(7) through (9); and
■ d. Revising paragraph (k).

The addition and revision read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(e) * * *

(7) Inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation);

(8) Recommendations declined from natural hazard, power loss, and siting hazard evaluations and justifications; and

(9) Recommendations declined from safety gaps between codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.

* * * * *

(k) The date of the most recent compliance audit; the expected date of completion of any changes resulting from the compliance audit and identification of whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.79 and 68.80; and findings declined from third-party compliance audits and justifications.

* * * * *

Subpart H—Other Requirements

■ 25. Amend § 68.210 by adding paragraphs (d) through (h) to read as follows:

§ 68.210 Availability of information to the public.

* * * * *

(d) *Chemical hazard information.* The owner or operator of a stationary source shall provide, upon request by any member of the public residing, working, or spending significant time within 6 miles of the fenceline of a stationary source, the following chemical hazard information for all regulated processes:

(1) *Regulated substances information.* Names of regulated substances held in a process;

(2) *Safety Data Sheets.* SDSs for all regulated substances located at the facility;

(3) *Accident history information.* Provide the five-year accident history information required to be reported under § 68.42;

(4) *Emergency response program.* The following summary information concerning the stationary source's compliance with § 68.10(f)(3) and the emergency response provisions of subpart E of this part as applicable:

(i) Whether the stationary source is a responding stationary source or a non-responding stationary source;

(ii) Name and phone number of local emergency response organizations with which the owner or operator last coordinated emergency response efforts, pursuant to § 68.180; and

(iii) For stationary sources subject to § 68.95, procedures for informing the public and local emergency response agencies about accidental releases;

(5) *Exercises.* A list of scheduled exercises, excluding dates, required under § 68.96 occurring within one year from the date of request;

(6) *LEPC contact information.* Include LEPC name, phone number, and web address as available; and

(7) *Declined recommendations and justifications.* Include declined recommendations and justifications required under §§ 68.170(e)(7) and 68.175(e)(7) through (9).

(e) *Languages.* The information shall be made available in English or in at least any two other commonly spoken languages by the population potentially affected, as requested.

(f) *Notification of availability of information.* The owner or operator shall provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that:

(1) Information specified in paragraph (d) of this section is available to the public residing, working, or spending significant time within 6 miles of the stationary source upon request. The notification shall:

(i) Specify the information elements, identified in paragraph (d) of this section, that can be requested; and

(ii) Provide instructions for how to request the information including verification of presence within 6-miles (*e.g.,* email, mailing address, and/or telephone or website request); and

(2) Identify where to access information on community preparedness, if available, including shelter-in-place and evacuation procedures.

(g) *Timeframe to provide requested information.* The owner or operator shall provide the requested information under paragraph (d) of this section within 45 days of receiving a request.

(h) *Recordkeeping.* The owner or operator shall maintain a record of the members of the public requesting chemical hazard information for five years.

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