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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 10656 of October 20, 2023

Minority Enterprise Development Week, 2023

By the President of the United States of America

A Proclamation

During Minority Enterprise Development Week, we honor the innovators and job creators who run our minority-owned businesses and recommit to providing them with the resources they need to thrive and continue being engines of our economy.

Minority enterprises provide critical goods and services; generate nearly $2 trillion in revenue each year; and serve as reminders of realized American dreams and fulfilled hopes of economic mobility, community uplift, and generational wealth. But even as minority entrepreneurs make critical contributions to our country, they still face barriers that prevent them from reaching their full potential. Capital is frequently inaccessible to minority-owned businesses. Firms owned by minorities are more likely to experience financial stress than those owned by non-minorities. For too long, minority-owned companies had less access to Government contracts, keeping them from accessing some of the more than $650 billion spent by the Federal Government on purchasing goods and services. These conditions have made it so people who have the skills, the drive, and the determination to succeed are often unable to win in our economy.

My Administration is working to open the doors of opportunity to include those who have been left behind for too long. On my first day as President, I issued an Executive Order directing the Federal Government to use all the tools at its disposal to advance racial equity and support underserved communities, and we have taken steps to promote opportunities specifically for small disadvantaged businesses ever since. For example, in my Executive Order on Further Advancing Racial Justice and Support for Underserved Communities, I directed agencies to make efforts to increase the share of Federal contracts going to these companies to 15 percent by 2025. Within a year, we increased the amount these companies earned from Federal contracts by $7.5 billion—totaling nearly $70 billion in Fiscal Year 2022 alone. In addition, the Small Business Administration (SBA) has supported billions of dollars in lending to small businesses that would otherwise struggle to access vital capital. As part of those efforts, SBA has supported over $4 billion in loans to Black- and Latino-owned small businesses. Since 2020, the rate of SBA-backed loans going to Asian American-owned businesses has increased by about 40 percent; more than doubled for Black-owned businesses; and doubled for Latino-owned businesses, reaching a record $3 billion in lending. Indeed, Asian American-, Black-, and Latino-owned businesses are seeing faster creation rates today than they have in years. We have provided billions of dollars in investments to support Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Asian American and Native American Pacific Islander-Serving Institutions as they help build the next generation of minority entrepreneurs.

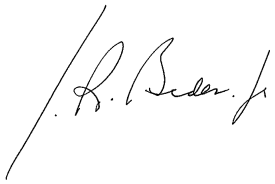
Through the American Rescue Plan, which I signed soon after coming into office to vaccinate the Nation and rebuild our economy, we invested $10 billion to re-establish and improve the State Small Business Credit Initiative—a program that leverages investments from the public and private sectors to increase access to capital for small businesses across the country. Our

Bipartisan Infrastructure Law also expanded and made permanent the Minority Business Development Agency to ensure that support is always available to minority-owned businesses. We have also implemented other historic bills like the Inflation Reduction Act and the CHIPS and Science Act, we are ensuring minority business enterprises benefit from billions of dollars of investments to rebuild our roads and bridges, bring manufacturing back to America, and unleash a clean energy boom here at home.

America is the only Nation in the world founded on the idea that we are all created equal and deserve to be treated equally throughout our lives. We have never fully lived up to that promise, but we have never walked away from it either. This Minority Enterprise Development Week, my Administration remains dedicated to living up to our founding idea by leveling the playing field for minority-owned businesses, ensuring every American has the chance to build a business they can be proud of and realize their American Dream.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 22 through October 28, 2023, as Minority Enterprise Development Week. I call upon the people of the United States to acknowledge and celebrate the achievements and contributions of minority business owners and enterprises and commit to promoting systemic economic equality.

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



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Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0010]

RIN 1904–AD78

Energy Conservation Program: Test Procedure for Walk-In Coolers and Walk-In Freezers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; correcting amendments.

SUMMARY: On May 4, 2023, the U.S. Department of Energy (''DOE'') published a final rule adopting test procedures for walk-in coolers and walk-in freezers. This document corrects errors and omissions in that final rule. Neither the errors and omissions nor the corrections affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective October 25, 2023.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On May 4, 2023, DOE published a final rule (''May 2023 Final Rule'') amending the test procedures for walk-in coolers and freezers (''walk-ins'') at title 10 of the Code of Federal Regulations (''CFR'') part 431, subpart R, appendices A, B, C, and C1 (hereafter referred to as ''appendix A'', ''appendix B'', ''appendix C'', and ''appendix C1'', respectively). 88 FR 28780. Since publication of the May 2023 Final Rule, DOE has identified errors and omissions in the regulatory text established by that final rule. DOE is issuing this rule to correct certain errors and omissions in the May 2023 Final Rule, specifically in 10 CFR 429.70 and appendices A, B, C, and C1, and to assist regulated entities with compliance efforts. The corrections are described in the following paragraphs.

In 10 CFR 429.70(f)(5)(vi), Table 7 of the regulatory text in the May 2023 Final Rule was erroneously labeled as ''Table 7 to Paragraph (f)(5)(iv),'' whereas it should have been labeled as ''Table 7 to Paragraph (f)(5)(vi)''. 88 FR 28780, 28837. This document corrects the typographical error.

Section 5.2.1 of appendix A as finalized by the May 2023 Final Rule erroneously instructs the reader to determine standardized thermal transmittance per section 5.1.1 of appendix A. 88 FR 28780, 28840. However, there is no section 5.1.1 of appendix A; this should instead reference section 5.1 of appendix A. This document corrects this typographical error.

In the May 2023 Final Rule preamble text, DOE states that it is maintaining the current requirement that testing be completed within 24 hours of cutting a test specimen from the envelope components. 88 FR 28780, 28800. However, this requirement was erroneously omitted from the regulatory text in appendix B. Section 5.3 of appendix B should instruct the reader that ''Testing must be completed within 24 hours of samples being cut for testing per section 5.2.5 of this appendix''. This document corrects this inadvertent omission.

Section 5.2.5.7 of appendix B as finalized by May 2023 Final Rule erroneously instructs the reader ''To determine the parallelism of the specimen for side 2, repeat section'' while omitting which section to repeat. 88 FR 28780, 28845. Section 5.2.5.7 should state ''To determine the parallelism of the specimen for side 2, repeat section 5.2.5.6 of this appendix''. This document corrects this inadvertent omission.

In the May 2023 Final Rule regulatory text, the seventh column of table 17 in appendix C and table 5 in appendix C1 erroneously specify that the compressor capacity or operating mode of the ''Off-Cycle Power'' test shall be ''Compressor On'' and that the compressor capacity or operating mode of ''Refrigeration Capacity, Ambient Condition A'' test shall be ''Compressor Off''. 88 FR 28780, 28846, 28851–28852. These labels in the seventh column should be switched such that the ''Off-Cycle Power'' test is labeled as ''Compressor Off'' and the ''Refrigeration Capacity, Ambient Condition A'' test is labeled as ''Compressor On''. This document corrects these typographical errors.

In the May 2023 Final Rule regulatory text, the table for Test Operating Conditions for Medium-Temperature CO_2 Unit Coolers in appendix C is erroneously labeled as Table 17. 88 FR 28780, 28846. In appendix C, Table 15 and Table 16 provide modifications to Table 15 and Table 16 included in the referenced industry standard, AHRI 1250–2009 ''Standard for Performance Rating of Walk-in Coolers and Freezers.'' Because these tables do not represent table numbering within appendix C, subsequent tables only included in appendix C (*i.e.,* Tables 17 through 19 and the final Table 1, discussed in the following paragraphs) should not continue with the AHRI 1250–2009 table numbering approach and should provide distinct table labels. To address this error and to avoid confusion with the table numbering referencing AHRI 1250–2009, Table 17 as well as the references thereto should instead be labeled as Table C.1. This document corrects this typographical error.

Similarly, in the May 2023 Final Rule regulatory text, the table for Test Operating Conditions for Low-Temperature CO_2 Unit Coolers in appendix C is erroneously labeled as Table 18. *Id.* This table as well as the references thereto should instead be labeled as Table C.2. This document corrects this typographical error.

In the May 2023 Final Rule regulatory text, the table for Test Operating Conditions for High-Temperature Unit Coolers in appendix C is erroneously labeled as Table 19. *Id.* This table as well as the references thereto should

instead be labeled as Table C.3. This document corrects this typographical error.

In the May 2023 Final Rule regulatory text, the table for Test Condition Tolerances and Hierarchy for Refrigerant Charging and Setting of Refrigerant Conditions is erroneously labeled as Table 1. 88 FR 28780, 28847–28848. This table should instead be labeled as Table C.4. This document corrects this typographical error.

In the May 2023 Final Rule regulatory text, in the first column from the left of table 3 to appendix C1, rows three, five, and seven erroneously included a table note numbered five at the end of each ''Test description''. 88 FR 28780, 28851. There is no table note that corresponds to note five in this table, however. This document corrects this error.

In the May 2023 Final Rule regulatory text, in the sixth column from the left of table 9 to appendix C1, row nine has ''Compressor operating mode'' erroneously specified as ''Maximum Capacity, k=2''. 88 FR 28780, 28853. This label should instead read ''High Capacity, k=2''. This document corrects this error.

In the May 2023 Final Rule regulatory text, in the sixth column from the left of table 13 to appendix C1, rows three, seven, and eleven have ''Compressor operating mode'' erroneously specified as ''Minimum Capacity, k=i''. 88 FR 28780, 28854. These labels should instead read ''Intermediate Capacity, k=i''. This document corrects this error.

In the May 2023 Final Rule regulatory text, in the sixth column of table 14 to appendix C1, row 2 has ''Compressor operating mode'' erroneously specified as ''Minimum Capacity, k=i''. *Id.* This label should instead read ''Intermediate Capacity, k=i''. This document corrects this error.

II. Need for Correction

As published, the regulatory text in May 2023 Final Rule may lead to confusion in the execution of the DOE test procedure for walk-ins due to incorrect table labeling, omitted section references, and extraneous footnotes. Because this final rule would simply correct errors and omissions in the text without making substantive changes to test procedures adopted in the May 2023 Final Rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the May 2023 Final Rule remain unchanged for these final rule technical corrections. These determinations are set forth in the May 2023 Final Rule. 88 FR 28780, 28827–28834.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE finds that there is good cause to not issue a separate notice to solicit public comment on those technical corrections contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. As explained previously, the corrections in this document do not affect the substance of or any of the conclusions reached in support of the May 2023 Final Rule. Additionally, given the May 2023 Final Rule is a product of an extensive administrative record with numerous opportunities for public comment, DOE finds additional comment on the technical corrections is unnecessary. Therefore, providing prior notice and an opportunity for public comment on correcting objective errors and omissions that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting errors and omissions makes non-substantive changes to the test procedure in the May 2023 Final Rule. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on August 23, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of 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 August 23, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE corrects part 429 and 431 of chapter II of title 10 of the Code of Federal Regulations by making the following correcting amendments:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.70 by revising the heading for the table in paragraph (f)(5)(vi) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(f) * * *

(5) * * *

(vi) * * *

Table 7 to Paragraph (f)(5)(vi)

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 4. Appendix A to subpart R of part 431 is amended by revising section 5.2.1 to read as follows:

Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers

* * * * *

5. * * *

5.2 * * *

5.2.1 For display doors and display panels, thermal transmittance, U_{dd} or U_{dp}, respectively, shall be the standardized thermal transmittance, U_{ST}, determined per section 5.1 of this appendix.

* * * * *

■ 5. Appendix B to subpart R of part 431 is amended by revising sections 5.2.5.7 and 5.3 to read as follows:

Appendix B to Subpart R of Part 431—Uniform Test Method for the Measurement of R-Value of Insulation for Envelope Components of Walk-In Coolers and Walk-In Freezers

* * * * *

5. * * *

5.2 * * *

5.2.5 * * *

5.2.5.7 To determine the parallelism of the specimen for side 2, repeat section 5.2.5.6 of this appendix.

* * * * *

5.3 *K-factor Test.* Determine the thermal conductivity, or K-factor, of the 1-inch-thick specimen in accordance with the specified sections of ASTM C518–17. Testing must be completed within 24 hours of the specimen being cut for testing per section 5.2.5 of this appendix.

* * * * *

■ 6. Appendix C to subpart R of part 431 is amended by:

■ a. In section 3.1.6:

■ i. Removing the words ''table 17'' and adding in its place, the words ''table C.1'' wherever they appear;

■ ii. Revising the newly designated table C.1;

■ iii. Removing the words ''table 18'' and adding in its place, the words ''table C.2'' wherever they appear;

■ b. In section 3.1.7, removing the words ''table 19'' and adding in its place, the words ''table C.3'' wherever they appear;

■ c. In section 3.2.7.1, removing the words ''table 1'' and adding in its place, the words ''table C.4'' wherever they appear.

The revision reads as follows:

Appendix C to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-In Cooler and Walk-In Freezer Refrigeration Systems

* * * * *

3. * * *

3.1. * * *

3.1.6 * * *

TABLE C.1—TEST OPERATING CONDITIONS FOR MEDIUM-TEMPERATURE CO_2 UNIT COOLERS

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Suction dew point temp, °F	Liquid inlet bubble point temperature °F	Liquid inlet subcooling, °F	Compressor capacity	Test objective
Off-Cycle Power	35	<50	.....	.....	.....	Compressor Off ...	Measure fan input power during compressor off-cycle.
Refrigeration Capacity, Ambient Condition A.	35	<50	25	38	5	Compressor On ...	Determine Net Refrigeration Capacity of Unit Cooler.

Notes:
[1] Superheat shall be set as indicated in the installation instructions. If no superheat specification is given a default superheat value of 6.5 °F shall be used.

■ 7. Appendix C1 to subpart R of part 431 is amended by:

■ a. In section 3.2.1, revising table 3;

■ b. In section 3.2.2, revising table 5;

■ c. In section 3.2.3, revising table 9; and

■ d. In section 3.2.4, revising tables 13 and 14.

The revisions read as follows:

Appendix C1 to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF2 of Walk-In Cooler and Walk-In Freezer Refrigeration Systems

* * * * *

3. * * *

3.2. * * *

3.2.1. * * *

TABLE 3—TEST OPERATING CONDITIONS FOR FIXED-CAPACITY HIGH-TEMPERATURE OUTDOOR MATCHED-PAIR OR SINGLE-PACKAGED REFRIGERATION SYSTEMS

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, % [1]	Condenser air entering dry-bulb, °F	Condenser air entering wet-bulb, °F	Compressor status	Test objective
Refrigeration Capacity A	55	55	95	[3] 75, [4] 68	Compressor On ...	Determine Net Refrigeration Capacity of Unit Cooler, input power, and EER at Test Condition.
Off-Cycle Power, Capacity A ...	55	55	95	[3] 75, [4] 68	Compressor Off ...	Measure total input wattage during compressor off-cycle, $(\dot{E}_{cu,off} + \dot{E}F_{comp,off})$ [2].
Refrigeration Capacity B	55	55	59	[3] 54, [4] 46	Compressor On ...	Determine Net Refrigeration Capacity of Unit Cooler and system input power at moderate condition.
Off-Cycle Power, Capacity B ...	55	55	59	[3] 54, [4] 46	Compressor Off ...	Measure total input wattage during compressor off-cycle, $(\dot{E}_{cu,off} + \dot{E}F_{comp,off})$ [2].
Refrigeration Capacity C	55	55	35	[3] 34, [4] 29	Compressor On ...	Determine Net Refrigeration Capacity of Unit Cooler and system input power at cold condition.
Off-Cycle Power, Capacity C ...	55	55	35	[3] 34, [4] 29	Compressor Off ...	Measure total input wattage during compressor off-cycle, $(\dot{E}_{cu,off} + \dot{E}F_{comp,off})$ [2].

Notes:
[1] The test condition tolerance (maximum permissible variation of the average value of the measurement from the specified test condition) for relative humidity is 3%.
[2] Measure off-cycle power as described in sections C3 and C4.2 of AHRI 1250–2020.
[3] Required only for evaporative condensing units (*e.g.,* incorporates a slinger ring).
[4] Maximum allowable value for Single-Packaged Systems that do not use evaporative Dedicated Condensing Units, where all or part of the equipment is located in the outdoor room.

* * * * * 3.2.2 * * *

3.2.2 * * *

TABLE 5—TEST OPERATING CONDITIONS [1] FOR MEDIUM-TEMPERATURE CO_2 UNIT COOLERS

Test title	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Suction dew point temp,[3] °F	Liquid inlet bubble point temperature, °F	Liquid inlet subcooling, °F	Compressor operating mode	Test objective
Off-Cycle Power	35	<50				Compressor Off	Measure unit cooler input wattage during compressor off-cycle, $\dot{E}F_{comp,off}$[2].
Refrigeration Capacity, Ambient Condition A.	35	<50	25	38	5	Compressor On	Determine Net Refrigeration Capacity of Unit Cooler, $\dot{q}_{mix,rack}$

Notes:
[1] Superheat shall be set as indicated in the installation instructions. If no superheat specification is given a default superheat value of 6.5 °F shall be used.
[2] Measure off-cycle power as described in sections C3 and C4.2 of AHRI 1250–2020.
[3] Suction Dew Point shall be measured at the Unit Cooler Exit conditions.

* * * * * 3.2.3 * * *

TABLE 9—TEST OPERATING CONDITIONS FOR TWO-CAPACITY LOW-TEMPERATURE OUTDOOR DEDICATED CONDENSING UNITS

Test title	Suction dew point, °F	Return gas, °F	Condenser air entering dry-bulb, °F	Condenser air entering wet-bulb, °F [1]	Compressor operating mode
Capacity, Condition A, Low Capacity	−22	5	95	75	Low Capacity, k=1.
Capacity, Condition A, High Capacity	−22	5	95	75	High Capacity, k=2.
Off-Cycle, Condition A			95	75	Compressor Off.
Capacity, Condition B, Low Capacity	−22	5	59	54	Low Capacity, k=1.
Capacity, Condition B, High Capacity	−22	5	59	54	High Capacity, k=2.
Off-Cycle, Condition B			59	54	Compressor Off.
Capacity, Condition C, Low Capacity	−22	5	35	34	Low Capacity, k=1.
Capacity, Condition C, High Capacity.	−22	5	35	34	High Capacity, k=2.
Off-Cycle, Condition C			35	34	Compressor Off.

Notes:
[1] Required only for evaporative condensing units (*e.g.,* incorporates a slinger ring).

* * * * * 3.2.4 * * *

TABLE 13—TEST OPERATING CONDITIONS FOR VARIABLE- OR MULTIPLE-CAPACITY LOW-TEMPERATURE OUTDOOR DEDICATED CONDENSING UNITS

Test title	Suction dew point, °F	Return gas, °F	Condenser air entering dry-bulb, °F	Condenser air entering wet-bulb, °F [1]	Compressor operating mode
Capacity, Condition A, Minimum Capacity.	−22	5	95	75	Minimum Capacity, k=1.
Capacity, Condition A, Intermediate Capacity.	−22	5	95	75	Intermediate Capacity, k=i.
Capacity, Condition A, Maximum Capacity.	−22	5	95	75	Maximum Capacity, k=2.
Off-Cycle, Condition A			95	75	Compressor Off.
Capacity, Condition B, Minimum Capacity.	−22	5	59	54	Minimum Capacity, k=1.
Capacity, Condition B, Intermediate Capacity.	−22	5	59	54	Intermediate Capacity, k=i.
Capacity, Condition B, Maximum Capacity.	−22	5	59	54	Maximum Capacity, k=2.
Off-Cycle, Condition B			59	54	Compressor Off.
Capacity, Condition C, Minimum Capacity.	−22	5	35	34	Minimum Capacity, k=1.
Capacity, Condition C, Intermediate Capacity.	−22	5	35	34	Intermediate Capacity, k=i.
Capacity, Condition C, Maximum Capacity.	−22	5	35	34	Maximum Capacity, k=2.

TABLE 13—TEST OPERATING CONDITIONS FOR VARIABLE- OR MULTIPLE-CAPACITY LOW-TEMPERATURE OUTDOOR DEDICATED CONDENSING UNITS—Continued

Test title	Suction dew point, °F	Return gas, °F	Condenser air entering dry-bulb, °F	Condenser air entering wet-bulb, °F [1]	Compressor operating mode
Off-Cycle, Condition C	.....	.....	35	34	Compressor Off.

Notes:
[1] Required only for evaporative condensing units (*e.g.,* incorporates a slinger ring).

TABLE 14—TEST OPERATING CONDITIONS FOR VARIABLE- OR MULTIPLE-CAPACITY LOW-TEMPERATURE INDOOR DEDICATED CONDENSING UNITS

Test title	Suction dew point, °F	Return gas, °F	Condenser air entering dry-bulb, °F	Condenser air entering wet-bulb, °F [1]	Compressor operating mode
Capacity, Condition A, Minimum Capacity.	−22	5	90	75	Minimum Capacity, k=1.
Capacity, Condition A, Intermediate Capacity.	−22	5	90	75	Intermediate Capacity, k=i.
Capacity, Condition A, Maximum Capacity.	−22	5	90	75	Maximum Capacity, k=2.
Off-Cycle, Condition A	.....	.....	90	75	Compressor Off.

Notes:
[1] Required only for evaporative condensing units (*e.g.,* incorporates a slinger ring).

* * * * *

[FR Doc. 2023–18531 Filed 10–24–23; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1740; Special Conditions No. 25–841–SC]

Special Conditions: The Boeing Company Model 777 Series Airplanes; Passenger Seats With Pretensioner Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777 series airplanes. These airplanes 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 pretensioner restraint systems installed on passenger seats. 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 November 24, 2023.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin Safety, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2021, Boeing applied for an amendment to Type Certificate No. T00001SE for Boeing Model 777 series airplanes. These airplanes, currently approved under Type Certificate No. T00001SE, are twin-engine, transport-category airplanes with maximum seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that Model 777 series airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, 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 Boeing Model 777 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, Boeing Model 777 series airplanes must comply with the fuel-vent and 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 § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

Boeing Model 777 series airplanes will incorporate the following novel or unusual design feature:

Forward-facing seats incorporating a shoulder harness with pretensioner

device, otherwise known as a pretensioner restraint system, which is intended to protect the occupants from head injuries.

Discussion

Boeing will install, in Model 777 series airplanes, forward-facing seats that incorporate a shoulder harness with a pretensioner system, for head-injury protection, at each seat place.

Shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

The pretensioner restraint system utilizes a retractor that eliminates slack in the shoulder harness and pulls the occupant back into the seat prior to impact. This has the effect of reducing forward translation of the occupant, reducing head arc, and reducing loads in the shoulder harness.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. Such excursion could result in the head-injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 1 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B, ''Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes.'' For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t1 is reached, where t1 represents the time interval between 0 and t1 on the referenced pulse shape, as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second, larger impact occurs.

Conditions 1 through 4 ensure that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 5 through 10 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

The 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.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–23–01–SC for Boeing Model 777 airplanes, which was published in the **Federal Register** on May 11, 2023 (88 FR 30262).

The FAA received one response, from the Air Line Pilots Association, International, in support of the special conditions. The special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model 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, 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 Boeing Model 777 series airplanes.

In addition to the requirements of § 25.562, forward-facing passenger seats with pretensioner restraint systems must meet the following:

(1) Head Injury Criteria (HIC)

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

When an airbag device is present in addition to the pretensioner restraint system, and the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

ATD head contact with the seat or other structure, through the airbag, or contact subsequent to contact with the airbag, requires a HIC value that does not exceed 1000.

(2) Protection During Secondary Impacts

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

(3) Protection of Occupants Other Than 50th Percentile

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

(a) The seat occupant is holding an infant.

(b) The seat occupant is a child in a child-restraint device.

(c) The seat occupant is a pregnant woman.

(4) Occupants Adopting the Brace Position

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

(5) Inadvertent Pretensioner Actuation

(a) The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}.

(b) The system must be shown not to be susceptible to inadvertent pretensioner actuation as a result of wear and tear, nor inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

(c) The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

(d) Inadvertent pretensioner actuation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

(6) Availability of the Pretensioner Function Prior to Flight

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}) between inspection intervals.

(7) Incorrect Seat Belt Orientation

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

(8) Contamination Protection

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

(9) Prevention of Hazards

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

(10) Functionality After Loss of Power

The system must function properly after loss of normal airplane electrical power and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Kansas City, Missouri, on October 19, 2023.

Patrick R. Mullen,

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

[FR Doc. 2023–23519 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

[Docket No. CPSC–2019–0008]

Standard for the Flammability of Clothing Textiles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is amending the Standard for the Flammability of Clothing Textiles. The revisions clarify existing provisions, expand permissible equipment and materials for testing, and update equipment requirements that are outdated. The Commission issues this amendment under the authority of the Flammable Fabrics Act.

DATES: This rule is effective on April 22, 2024. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 22, 2024.

FOR FURTHER INFORMATION CONTACT: Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7945 or (888) 531–9070; email: *sbo@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2022, the Commission published a notice of proposed rulemaking (NPR), proposing to amend the Standard for the Flammability of Clothing Textiles at 16 CFR part 1610 (Standard). 87 FR 56289. The Standard was codified under the Flammable Fabrics Act (FFA; 15 U.S.C. 1191–1204). The purpose of the FFA is to prohibit the importation, manufacture for sale, or sale in commerce of any fabric or article of wearing apparel that is ''so highly flammable as to be dangerous when worn by individuals.'' Public Law 83–88, 67 Stat. 111 (June 30, 1953). The Standard accomplishes this by providing a national standard for testing and rating the flammability of textiles and textile products used for clothing. The Standard specifies test equipment, materials, and procedures for testing the flammability of clothing textiles and prohibits the use of highly flammable textiles in clothing.

The amendments proposed in the NPR and adopted in this final rule [1] aim to clarify existing provisions in the Standard and update the specifications for materials and equipment that have become outdated. The amendments do not alter the testing or criteria in the Standard for determining the flammability of a fabric or whether it is permissible for use in clothing; rather, they facilitate accurate testing and classifications by clarifying existing requirements and updating material and equipment specifications to reflect currently available materials, equipment, and technologies.

The amendments proposed in the NPR and adopted in this final rule address three areas of the Standard. First, they aim to clarify and streamline the provisions regarding test result codes (*i.e.,* burn codes), which help determine the classification of a textile and whether it may be used for clothing. The amendments remove an unnecessary code and revise wording in the provisions to clarify the existing requirements. Second, the amendments revise the stop thread specification, which indicates the thread that must be used in flammability testing. The description has become unclear, as threads matching the description in the Standard are no longer readily available. Third, amendments revise the refurbishing requirements in the Standard, which address dry cleaning and laundering specimens during the testing process. In recent years, there have been increasing restrictions on the use of the dry cleaning solvent specified in the Standard, and washing machines that meet the specifications required in the Standard are no longer made.

The NPR and CPSC staff's briefing package supporting it included detailed information about the need for the amendments, the rationale for the revisions, and test results illustrating the comparability of the flammability classifications under the existing Standard and amendments. The NPR also included detailed information about 16 CFR 1610.40 of the Standard, which permits the use of alternative apparatus, procedures, or criteria for tests for guaranty purposes. This allowance permits the continued use of the dry cleaning solvent and laundering methods in the current Standard by relying on CPSC's test results demonstrating the comparability of test results under the current Standard and the amendments.

This final rule adopts the amendments proposed in the NPR, with only minor modifications. Therefore, this notice focuses on comments received in response to the NPR and the minor modifications in the final rule. For detailed information about the amendments, the rationale for them, the

[1] The Commission voted 4–0 to approve this rule.

comparability of flammability test results under the amendments, and the allowance in 16 CFR 1610.40, see the NPR and the briefing package supporting it.[2]

II. Statutory Requirements for Revising the Standard

The FFA specifies the requirements for the Commission to issue or amend a flammability standard. To issue a final rule, the Commission must make certain findings and publish a final regulatory analysis. 15 U.S.C. 1193(b), (j)(1), (j)(2). The Commission must find that each regulation or amendment:

- is needed to adequately protect the public from unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage;
- is reasonable, technologically practicable, and appropriate;
- is limited to fabrics, related materials, or products that present such unreasonable risks; and
- is stated in objective terms.

Id. 1193(b). In addition, to promulgate a regulation, the Commission must make the following findings and include them in the rule:

- if a voluntary standard addressing the risk of injury has been adopted and implemented, that either compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk or injury, or it is unlikely that there will be substantial compliance with the voluntary standard;
- that the benefits expected from the rule bear a reasonable relationship to its costs; and
- that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury.

Id. 1193(j)(2).

When issuing a final rule, the Commission must publish a final regulatory analysis with the regulation, which includes:

- a description of the potential benefits and costs of the rule, including benefits and costs that cannot be quantified, and who is likely to receive the benefits and bear the costs;
- a description of reasonable alternatives the Commission considered, their potential costs and benefits, and the reasons the Commission did not choose the alternatives; and
- a summary of significant issues raised by commenters in response to the preliminary regulatory analysis and the Commission's assessment of them.

Id. 1193(j)(1).

III. The Product and Risk of Injury [3]

The Standard applies to all items of clothing and fabrics intended to be used for clothing (*i.e.,* articles of wearing apparel), whether for adults or children, for daywear or nightwear,[4] with certain listed exclusions.[5]

Between January 1, 2017, and December 31, 2021 (the most recent years for which data are available), there were an average of 85.8 deaths annually in the United States that involved ignition of clothing. An average of 2.6 of these fatalities involved ignition or melting of nightwear, and an average of 83.2 of these fatalities involved ignition or melting of other clothing. Between 2000 and 2021, the number of clothing fire deaths declined, overall. In addition, using CPSC's National Electronic Injury Surveillance System (NEISS),[6] staff estimates that between January 1, 2018, and December 31, 2022 (the most recent year for which data are complete), an average of 5,500 nonfatal injuries per year were associated with clothing ignition and treated in U.S. hospital emergency departments.

IV. Comments on the NPR

In response to the NPR, CPSC received comments from four commenters: American Apparel and Footwear Association (AAFA), China WTO/TBT National Notification and Inquiry Center (China), a George Washington University student (student), and Consumer Safety Consultancy (CSC). Commenters generally supported updating the Standard and the amendments proposed in the NPR. This section summarizes the comments and responds to them; for a more detailed review of the comments, see Tab B in CPSC staff's briefing package supporting this rule.

A. Test Results Codes

Background: Table 1 to section 1610.4 of the Standard states, among other things, that a raised surface textile fabric is Class 1 if ''burn time is 0–7 seconds with no base burns (SFBB).'' In the NPR, the Commission proposed to replace the wording ''with no base burns (SFBB)'' in this description with ''with no SFBB burn code.'' The purpose of the proposed revision was to clarify the existing criteria for classifications of raised surface textile fabrics by referencing burn code SFBB more clearly, because two similar codes (SFBB poi and SFBB poi*) do not meet the criteria stated in the table.

Comment: CSC expressed confusion with the proposed revision, asserting that the description for Class 1 raised surface textile fabrics should state, ''Average Burn time is 0–7 seconds with surface flash only;'' that Table 1 is the general criteria for classification; and that the full discussion of how to classify is in section 1610.7.

Response: As explained in the NPR, the Class 1 description for raised surface textile fabrics in Table 1 indicates that if a fabric has a burn time between 0 and 7 seconds, it can only be Class 1 if it exhibits rapid surface flash only, and no base burns. Although there are three burn codes that indicate that a base burn occurred—SFBB, SFBB poi, and SFBB poi*—only SFBB is relevant to this determination because it applies when the base burn occurs as a result of the surface flash. In contrast, SFBB poi and SFBB poi* only have a base burn due to the flame that impinges on the fabric, not from the intensity of the surface of the fabric itself burning. As such, only fabrics with burn code SFBB, and not SFBB poi and SFBB poi*, are excluded from being Class 1. As the definition of ''base burn'' in section 1610.2(a) indicates, SFBB poi and SFBB poi* are not considered in determining a Class 3 fabric. However, staff is aware that some testers are confused by these provisions and incorrectly use SFBB poi and SFBB poi* as ''base burn'' codes for determining Class 3 fabrics. As such, the amendment clarifies the specific burn code—SFBB—being referenced. In addition, although CSC is correct that the regulatory text in the Standard provides a full discussion of classification, Table 1 to section 1610.4 provides a useful summary.

Background: In the NPR, the Commission proposed to add a note to

[2] The NPR is available at 87 FR 56289 (Sep. 14, 2022). The briefing package supporting the NPR is available at: *https://www.federalregister.gov/documents/2022/09/14/2022-19505/standard-for-the-flammability-of-clothing-textiles-notice-of-proposed-rulemaking#:~:text=The%20purpose%20of%20the%20Standard%20is%20to%20reduce,procedures%20for%20testing%20the%20flammability%20of%20clothing%20textiles.*

[3] For detailed information about the risk of injury, see Tab A of staff's briefing package supporting this document, available at: *https://www.cpsc.gov/s3fs-public/Final-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=387WEbeX45Rw24bthoqIaxkMAExYy5eB.*

[4] Other regulations governing the flammability of children's sleepwear, in 16 CFR parts 1615 and 1616, are more stringent than the general wearing apparel flammability standard in 16 CFR part 1610. The amendments in this document would not affect the children's sleepwear standards.

[5] Excluded products include certain hats, gloves, footwear, interlining fabrics, plain surface fabrics meeting specified criteria, and fabrics made from certain fibers that, from years of testing, have been shown to consistently yield acceptable results when tested in accordance with the Standard. 16 CFR 1610.1(c), (d).

[6] NEISS uses a probability sample of hospitals in the United States that represent all U.S. hospitals with emergency departments to identify and generate national estimates of nonfatal injuries treated in emergency departments.

Table 1 to section 1610.4, stating that burn codes SFBB poi and SFBB poi* are not considered a base burn for purposes of determining Class 2 and 3 fabrics. Class 2 and 3 descriptions for raised surface textile fabrics in the table specify that fabrics in these classes exhibit base burns (SFBB). Only fabrics with a burn code of SFBB, and not SFBB poi and SFBB poi*, have a base burn that occurs as a result of the surface flash rather than from the point of impingement of the burner. Although Table 1 already references burn code SFBB for the Class 2 and 3 descriptions, the purpose of the added note is to make clear that SFBB refers only to that specific code, and not the other two base burn codes.

Comment: In reference to this proposed revision, CSC stated that Table 1 is only a summary of the requirements for classification and it is confusing to put partial information in the table. CSC asserted that the information for evaluating SFBB poi and SFBB poi* for determining classifications should be in section 1610.7.

Response: As noted above, staff is aware that some testers incorrectly use SFBB poi and SFBB poi* as ''base burn'' codes, resulting in classifying fabrics as Class 3 when they should be designated as Class 1. The added note in Table 1 will make clear that SFBB poi and SFBB poi* are not used to determine Class 3 fabrics. Again, although CSC is correct that the regulatory text in the Standard provides a full discussion of classification, Table 1 provides a useful summary.

Background: In the NPR, the Commission proposed to streamline section 1610.8, which lists the burn codes and requirements relevant to them, by consolidating similar codes. The Commission proposed to combine burn codes SF uc, SF pw, and SF poi into a single new burn code, SF ntr (no time recorded, does not break stop thread). The three existing codes all describe burning behavior that does not have enough intensity to break the stop thread and, accordingly, have no burn time and all result in a fabric being Class 1. As the NPR explained, the rationale for the proposed change was that the purpose of burn codes is to determine the classification of fabrics, making it unnecessary to have all three of these codes, which do not result in different classifications.

Comment: CSC objected to this proposed change, noting that the codes reflect observations about the intensity of burning, which can indicate to testers or manufacturers characteristics of the fabric or that additional testing may be useful.

Response: CPSC agrees that the different burn codes can be helpful to indicate the flammability of a fabric, whether additional testing may be useful, and whether a fabric should be used. Accordingly, the Commission is not adopting the amendment proposed in the NPR to consolidate the three burn codes into a single code, SF ntr. Instead, the Commission is retaining burn codes SF poi, SF pw and SF uc as separate codes. However, to streamline the burn codes for raised surface textile fabrics, the Commission is revising the order of the burn codes for raised surface textile fabrics in section 1610.8(b)(2). See the discussion of the final rule amendments, below, for further explanation.

B. Stop Thread Specification

Comment: All four commenters agreed that the stop thread description needs to be updated. In support of the proposed amendment, AAFA noted that laboratories had reported difficulty in sourcing threads and agreed that a range of Tex [7] sizes was a good option. Two commenters (China and CSC) questioned whether additional testing should be done to identify an appropriate stop thread, specifically suggesting testing with raised surface textile fabrics and Class 3 fabrics (*i.e.,* dangerously flammable fabrics), respectively.

Response: As explained in the NPR, staff conducted testing to identify a thread specification that would yield comparable flammability results to the thread currently specified in the Standard, while providing greater clarity about the thread required and using a description that is readily available on the market. Staff did not use raised surface textile fabrics or Class 3 fabrics in the thread comparison study. The objective of the study was to examine the effect of different stop threads on the burn times under the Standard, so staff aimed to keep as many parameters constant as possible to observe burn time changes that resulted from changing only the stop thread. Staff used plain surface textile fabric, rather than raised surface textile fabric, because it typically has less variation in burn behavior between specimens. Staff did not use Class 3 fabric because it would be more difficult to observe the effect of the thread type on burn times if the burn times were all clustered close to 0 seconds.

[7] The Tex system is commonly used to define thread size. ''Tex'' is defined as the weight, in grams, of 1,000 meters of yarn and is determined by measuring and weighing cotton threads and calculating linear density.

C. Refurbishing Specifications

AAFA, China, and the student commenter all expressed support for updating the refurbishing procedures; CSC did not offer comments on this topic.

V. Final Rule Amendments

As noted above, the final rule adopts the amendments proposed in the NPR with only minor modifications. For a detailed explanation of the amendments, the rationale for them, and the testing and information supporting them, see the NPR and briefing package supporting it. This section describes the modifications to the amendments proposed in the NPR that the Commission is adopting in this final rule.

A. Test Results Codes

Currently, section 1610.8(b)(2) of the Standard provides eight possible burn codes for raised surface textile fabrics, which help determine the classification of a fabric. In the NPR, the Commission proposed to update the list of burn codes for raised surface textile fabrics to consolidate redundant codes, eliminate unnecessary and unclear codes, and improve clarity. One such revision proposed to combine three burn codes—SF uc, SF pw, and SF poi—into a single new burn code, SF ntr (no time recorded, does not break stop thread). The rationale was that these three codes all describe burning behavior that does not have enough intensity to break the stop thread and, accordingly, have no burn time and all result in a fabric being Class 1. Consolidating the three codes would result in the same classifications, but would streamline the regulation.

However, as noted above, CSC pointed out that these three codes can be useful because they indicate different burn behaviors, which can provide information about the characteristics or flammability of the fabric or result in testers or manufacturers opting to conduct further testing. As such, it is helpful to retain the three separate codes, as currently written in the regulations. Accordingly, the Commission is retaining the three separate codes. However, to accomplish the objective of streamlining the burn code list to make them easier to follow, the Commission is revising the order of the burn codes in section 1610.8(b)(2), as follows: [8] SFBB; SFBB poi; SFBB poi*; SF only; SF poi; SF uc; SF pw.

This order puts the codes used for identifying more flammable and

[8] Note that, as proposed in the NPR, the burn code ''_._sec.'' is being removed from the list of burn codes for raised surface textile fabrics.

dangerous fabrics (*i.e.,* Class 2 and 3) at the top of the list. Burn code SFBB is first in the list because this code, along with burn time, identifies the most flammable and hazardous fabrics—Class 2 and 3. The next codes—SFBB poi and SFBB poi*—also involve the flame burning through the base of the specimen, but are not considered base burns. The next code, SF only, is the next most hazardous because it involves the flame traveling the length of the specimen, although the flame does not burn through the base. The remaining codes—SF poi, SF uc, and SF pw—describe burning behavior that poses the least risk, as these all indicate Class 1 fabrics that do not have a burn time and merely describe burn behavior. This revision accomplishes the streamlining of burn codes proposed in the NPR, by allowing testers to identify the most hazardous fabrics first and, thereby, potentially eliminates the need for further testing. However, this revision does not substantively alter the burn codes or their criteria and the resulting classifications.

B. Stop Thread Specification

In the NPR, the Commission proposed to amend the description of stop thread in section 1610.2(p) and section 1610.5(a)(2)(ii) of the Standard to state that it consists of a spool of ''3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 35 to 45 Tex.'' In this final rule, the Commission adopts that proposed amendment, but revises ''Tex size of 35 to 45 Tex'' to state, ''a Tex size of 40 ±5.'' This is substantively the same as the NPR and provides the same Tex range as proposed in the NPR, but stating the range with an absolute value is more consistent with other ranges stated in the Standard and, therefore, provides greater clarity and consistency.

C. Refurbishing Specifications

The amendments to the refurbishing specifications proposed in the NPR are adopted in this final rule, without revisions.

VI. Section 1610.40—Use of Alternate Apparatus, Procedures, or Criteria for Tests for Guaranty Purposes

As explained in the NPR, section 1610.40 of the Standard permits the use of alternative apparatus, procedures, or criteria for tests for guaranty purposes. The FFA states that no person will be subject to prosecution for failing to comply with flammability requirements if that person has a guaranty, meeting specific requirements, that indicates that reasonable and representative tests confirmed compliance with flammability requirements issued under the statute. 15 U.S.C. 1197. For purposes of supporting guaranties, section 1610.40(c) of the Standard states that ''reasonable and representative tests'' could be either the flammability tests required in the Standard or ''alternate tests which utilize apparatus or procedures other than those'' in the Standard. The Standard specifies that for persons or firms issuing guaranties to use an alternative apparatus or procedure, the alternative must be ''as stringent as, or more stringent than'' the test in the Standard, which the Commission will consider met ''if, when testing identical specimens, the alternative test yields failing results as often as, or more often than,'' the test in the Standard.

Section 1610.40 sets out conditions for using this allowance. A person or firm using the allowance ''must have data or information to demonstrate that the alternative test is as stringent as, or more stringent than,'' the test in the Standard, and retain that information while using the alternative and for one year after. 16 CFR 1610.40(d)(1), (2), (3), and (f). Section 1610.40 specifies that the Commission will test fabrics in accordance with the Standard and will consider any failing results evidence of non-compliance and a false guaranty. *Id.* 1610.40(e), (g).

As proposed in the NPR, this final rule updates the washing machine specifications in the Standard. However, as explained in the NPR, for purposes of 16 CFR 1610.40, the Commission also concludes that the testing CPSC staff conducted that is discussed in the NPR and in full detail in Tabs D and E of the briefing package supporting the NPR [9] constitutes information demonstrating that the washing procedure specified in the current Standard, as stated below, is as stringent as the washing procedure in AATCC LP1–2021, Laboratory Procedure for Home Laundering: Machine Washing, 2021 (AATCC LP1–2021) that is required in this amendment. The washing procedure in the current Standard is:

- in compliance with sections 8.2.2, 8.2.3 and 8.3.1(A) of AATCC Test Method 124–2006, *Appearance of Fabrics after Repeated Home Laundering* (AATCC TM124–2006),
- using AATCC 1993 Standard Reference Detergent, powder,
- with wash water temperature (IV) (120° ±5 °F; 49° ±3 °C) specified in Table II of AATCC TM124–2006,
- using water level, agitation speed, washing time, spin speed and final spin cycle for ''Normal/Cotton Sturdy'' in Table III of AATCC TM124–2006, and
- with a maximum wash load of 8 pounds (3.63 kg) and consisting of any combination of test samples and dummy pieces.

If firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use washing machines that comply with the provisions in AATCC TM124–2006 in the current Standard.

Likewise, this final rule updates the drying machine specifications in the Standard. However, as with the washing machine specification, for purposes of 16 CFR 1610.40 the Commission concludes that the testing CPSC staff conducted that is provided in the NPR and in full detail in Tabs D and E of the briefing package supporting the NPR [10] constitutes information demonstrating that the drying procedure specified in the current Standard, as stated below, is as stringent as the drying procedure in AATCC LP1–2021 that is required in this amendment. The drying procedure in the current Standard is:

- in compliance with section 8.3.1(A), Tumble Dry, of AATCC TM124–2006,
- using the exhaust temperature (150° ±10 °F; 66° ±5 °C) specified in Table IV, ''Durable Press,'' of AATCC TM124–2006, and
- with a cool down time of 10 minutes specified Table IV, ''Durable Press,'' of AATCC TM124–2006.

If firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use dryers that comply with the provisions in AATCC TM124–2006 in the current Standard.

VII. Relevant Existing Standards

CPSC staff reviewed and assessed several voluntary and international standards that are relevant to clothing flammability:

- AATCC TM124;

[9] The NPR is available at 87 FR 56289 (Sep. 14, 2022). The briefing package supporting the NPR is available at: *https://www.federalregister.gov/documents/2022/09/14/2022-19505/standard-for-the-flammability-of-clothing-textiles-notice-of-proposed-rulemaking#:~:text=The%20purpose%20of%20the%20Standard%20is%20to%20reduce,procedures%20for%20testing%20the%20flammability%20of%20clothing%20textiles.*

[10] The NPR is available at 87 FR 56289 (Sep. 14, 2022). The briefing package supporting the NPR is available at: *https://www.federalregister.gov/documents/2022/09/14/2022-19505/standard-for-the-flammability-of-clothing-textiles-notice-of-proposed-rulemaking#:~:text=The%20purpose%20of%20the%20Standard%20is%20to%20reduce,procedures%20for%20testing%20the%20flammability%20of%20clothing%20textiles.*

- AATCC LP1–2021;
- ASTM D1230–22, *Standard Test Method for Flammability of Apparel Textiles;* and
- Canadian General Standards Board Standard CAN/CGSB–4.2 No. 27.5, *Textile Test Method Flame Resistance—45° Angle Test—One-Second Flame Impingement.*

As explained in the NPR, AATCC TM124–2006 is currently incorporated by reference into the Standard as part of the laundering requirements, but washing machines that meet this specification are no longer available on the market. The current version, AATCC TM124–2018, includes washing and drying specifications that are the same as AATCC LP1–2021. However, AATCC TM124 is not a flammability standard; rather, it is intended to evaluate the smoothness appearance of fabrics after repeated home laundering. As such, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing.

Similarly, the Commission is incorporating by reference portions of AATCC LP1–2021, but this standard also does not include full flammability testing and classification requirements because it is intended as a stand-alone laundering protocol, for use with other test methods. As such, it also contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing.

ASTM D1230 is similar to the Standard but contains similar issues to those this rule aims to address (*e.g.,* same unclear stop thread description as the Standard), and it contains different laundering specifications, terminology, and burn codes. As such, the Commission is not adopting provisions from ASTM D1230 because it would not provide the needed clarity that the amendments in this notice provide and would unnecessarily alter provisions in the Standard.

The Canadian standard also is similar to the Standard, but includes several differences from longstanding provisions in the Standard, such as stop thread specifications. Accordingly, adopting provisions from the Canadian standard would unnecessarily alter the Standard when the purpose of the amendments in this rule is to minimize changes to flammability test results while improving the clarity and usability of the Standard.

VIII. Final Regulatory Analysis

The Commission is issuing this amendment under the FFA, which requires that a final rule include a final regulatory analysis. 15 U.S.C. 1193(j). The following discussion is based on staff's final regulatory analysis, available in Tab C of the final rule briefing package.[11]

A. Description of Potential Costs and Benefits of the Amended Rule

The final regulatory analysis must include a description of the potential benefits and costs of the rule, including unquantifiable benefits and costs.

1. Potential Benefits

The primary benefit of the amendments is a reduction of burdens for testing laboratories by clarifying existing requirements and updating the specifications for stop thread, dry cleaning, and laundering to include options that are identifiable, permissible for use, and currently available. In addition, the amendments should improve consumer safety because the amendments provide comparable flammability results to the current Standard but would improve testing laboratories' abilities to conduct testing and obtain consistent and reliable results. This should improve consumer safety by ensuring that textiles intended for use in clothing are properly tested and classified so that dangerously flammable textiles are not used in clothing. Staff is unable to quantify these potential benefits but estimates that these benefits are likely to be small.

Burn Codes. The amendments to burn codes clarify and streamline these provisions of the Standard, which staff expects will improve the consistency and reliability of flammability testing results and classifications. More consistent and reliable test results, in turn, may provide some safety benefit to consumers, while reducing testing burdens for testing laboratories. Because these amendments are intended to clarify existing provisions and do not change current requirements for testing or classification, staff expects that they will provide a small amount of unquantifiable benefits.

Stop Thread. The amendments to the stop thread specification in the Standard clarify the type of thread required by using the Tex system, which is commonly used and understood by the industry, to define the thread size. The amendments also expand the range of threads permissible for use under the Standard by providing a range of permissible Tex sizes, rather than specifying a single thread specification, as the current Standard does. As such, the amendments clarify the requirements, which may have consumer safety benefits by yielding more consistent and reliable test results so that the flammability of fabrics are accurately identified. However, these benefits are expected to be small since the amendments provide comparable test results and classifications to the current Standard. The amendments also may ease burdens on testing laboratories, by making it easier to identify compliant thread and by making more threads permissible for use. Therefore, staff expects that these amendments will provide a small amount of unquantifiable benefits.

Dry Cleaning Specification. The amendments to the dry cleaning specification continue to allow use of perchloroethylene solvent, but add an additional specification, as an alternative, to accommodate testing laboratories that are unable to use the solvent currently specified in the Standard. The alternative specification, using hydrocarbon solvent, provides comparable flammability results to the perchloroethylene solvent specified in the Standard. CPSC staff assesses that the hydrocarbon solvent is comparable (or lower) in cost than other alternatives. Therefore, staff expects the amendments to reduce burdens on testing laboratories by providing an additional alternative for laboratories that are subject to restrictions on the use of perchloroethylene.

Laundering Specification. The amendments to the washing specifications provide a specification that can be met by machines that are currently on the market. Staff expects that this will reduce burdens on testing laboratories because it will eliminate the need to maintain and repair older machines and allow those testing laboratories that can no longer maintain or obtain washing machines that comply with the current Standard to continue to test to the Standard. Staff expects the amendments to the drying specifications will provide benefits as well. By requiring the use of the same standard for both washing and drying, these amendments streamline the requirements for testing laboratories, making it less cumbersome and less costly than obtaining and following two standards. Moreover, AATCC LP1–2021 is already familiar to many testing laboratories since it is used for other standards as well; as such, using this standard should be clear and low cost. In addition, requiring the use of a single standard (rather than referencing two standards) that is widely familiar to

[11] Staff's briefing package supporting this document is available at: *https://www.cpsc.gov/s3fs-public/Final-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=387WEbeX45Rw24bthoqIaxkMAExYy5eB.*

industry members should reduce the risk of confusion or testing errors, which may have some safety benefits for consumers by yielding consistent and reliable test results and classifications.

2. Potential Costs

Burn Codes. The amendments regarding burn codes clarify and streamline existing requirements, and do not change any testing, flammability results, or classification criteria. As such, staff does not expect these amendments to have any notable costs.

Stop Thread. The amendments regarding the stop thread specification clarify and expand the range of permissible threads. They do not change any testing, flammability results, or classification criteria. As staff's testing indicates, thread that meets the current specification in the Standard would comply with the amendments, and the amendments would allow for the use of a wider range of threads than the current Standard. This will allow testing laboratories to continue to use their existing thread or more easily obtain compliant thread by providing a wider range of options. Therefore, staff does not expect these amendments to have any notable costs.

Dry Cleaning Specification. The amendments to the dry cleaning specification allow for the continued use of perchloroethylene solvent, but also provide an additional alternative specification using hydrocarbon solvent. The amendments do not change any testing requirements or criteria and, as staff's testing demonstrates, the hydrocarbon alternative provides comparable flammability results and classifications to the perchloroethylene specification. As such, testing laboratories could continue to use the existing specification, but will also have an additional option for complying with the Standard. Therefore, staff does not expect these amendments to have any notable costs.

Laundering Specification. The amendments regarding the washing specification will require different washing machines than those that currently comply with the Standard, because those machines are no longer available on the market. However, firms have the option to continue using machines that comply with the current Standard under 16 CFR 1610.40, thereby avoiding the need to obtain new washing machines. As explained in the NPR and in this notice, the Commission concludes that, for purposes of 16 CFR 1610.40, the testing CPSC staff conducted that was provided in the NPR and in full detail in Tabs D and E of the briefing package supporting the NPR constitutes information demonstrating that the washing procedure specified in the current Standard is as stringent as the washing procedure in AATCC LP1–2021 that is adopted in this notice. Therefore, if firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use washing machines that comply with the provisions in AATCC TM124–2006 in the current Standard. This alternative would impose no costs, as testing laboratories could continue to use their existing compliant machines.

Although staff does not expect the amendments to the washing specifications to impose any costs, staff examined potential costs associated with obtaining machines that comply with the amendments to assess the costs to firms that choose to do so, rather than continuing to use existing machines in accordance with the allowance in 16 CFR 1610.40. The primary cost to firms that choose to obtain new machines would be the cost of new washing machines that comply with AATCC LP1–2021. Staff estimates that these machines cost an average of $4,300. However, this cost would be offset by the reduced costs of no longer needing to repair or maintain existing, outdated machines. Staff estimates that the cost of maintaining and repairing the outdated machines is $300 annually and assumes that if a laboratory chooses to upgrade machines, it expects to receive benefits from the upgrade that outweigh the acquisition costs. Firms that choose to obtain new machines might also incur the cost of buying a copy of AATCC LP1–2021, which is approximately $50 for AATCC members and $70 for non-members. Staff does not consider this a significant cost and firms will not incur this cost if they already have AATCC LP1–2021 to comply with other standards. Moreover, a read-only copy of AATCC LP1–2021 will be available for viewing on the AATCC website when this rule takes effect.

Staff was unable to determine the number of testing laboratories that test to the Standard and that would, therefore, by subject to the amendments. At a minimum, currently there are more than 300 testing laboratories that are CPSC-accepted third party laboratories that test to the Standard for purposes of children's product certifications. However, that is an underestimate of the number of firms impacted by the rule because testing laboratories need not be CPSC-accepted third party laboratories to test to the Standard for non-children's products. At a maximum, there are a total of 7,389 testing laboratories in the United States, according to the Census Bureau. However, this is an overestimate of the number of firms in the United States impacted by the rule because this number includes testing laboratories that do not test to the Standard. Staff estimates that each testing laboratory that tests to the Standard has three washing machines that do not meet AATCC LP1–2021.

The amendments regarding the drying specification are unlikely to require different dryers than those that currently comply with the Standard because most dryers can comply with both specifications. However, to the extent that dryers that meet the current Standard do not meet the amendments, firms would again have the option to continue to use their existing compliant dryers in accordance with 16 CFR 1610.40. Therefore, this alternative would eliminate any potential costs associated with the amendments. Moreover, because most dryers comply with both the current Standard and AATCC LP1–2021, staff does not expect that most firms will need to replace their dryers even if they chose to comply with AATCC LP1–2021, instead of using 16 CFR 1610.40 to continue to comply with AATCC TM124–2006.

B. Alternatives to the Rule

A final regulatory analysis must describe reasonable alternatives to the rule, their potential costs and benefits, and a brief explanation of the reasons the alternatives were not chosen. 15 U.S.C. 1193(j). CPSC considered several alternatives to the rule.

Burn Codes. CPSC considered retaining the current burn code provisions in the Standard, rather than updating them. This alternative would not create any costs, but also would not provide any benefits. In comparison, the amendments do not create any costs, but have benefits by providing needed clarifications.

Stop Thread Specification. CPSC considered updating the stop thread specification to require the use of a stop thread with the specific Tex size of the thread currently required in the Standard. This would not create any costs since thread that meets the current Standard would meet this alternative. However, this alternative would be more restrictive than the final rule by providing fewer options of stop threads. Because staff determined that the range of Tex sizes in the rule would provide comparable flammability results to the Standard, while providing a broader range of options, CPSC did not select this alternative.

Another alternative CPSC considered is to allow a wider range of Tex sizes, such as the full range staff assessed

during flammability testing and found to yield comparable flammability results to the Standard. This would further reduce burdens on testing laboratories by providing even more options. However, staff concluded that it is more appropriate to limit the range of Tex sizes to those of cotton threads that yielded comparable flammability results to the Standard because some polyester threads are designed to be flame resistant.

Dry Cleaning Specification. In addition to the hydrocarbon alternative adopted in this amendment, CPSC considered two additional dry cleaning specifications—silicone and butylal. As staff's testing indicates, both of these alternatives also yield comparable flammability results to the current Standard and, therefore, are likely to offer similar benefits to the hydrocarbon specification. Staff identified estimated costs of the four dry cleaning solvent specifications using comparisons provided by the Toxic Use Reduction Institute (TURI). These comparisons estimate that dry cleaning with perchloroethylene involves equipment costs between $40,000 and $65,000 and solvent costs of $17 per gallon; dry cleaning with hydrocarbon involves equipment costs between $38,000 and $75,000 and solvent costs of $14 to $17 per gallon; dry cleaning with silicone involves equipment costs between $30,500 and $55,000 and solvent costs of $22 to $28 per gallon; and dry cleaning with butylal involves equipment costs between $50,000 and $100,000 and solvent costs of $28 to $34 per gallon. CPSC selected hydrocarbon rather than the silicone or butylal alternatives because butylal yielded classifications consistent with the current Standard slightly less often during comparison testing; hydrocarbon is the most commonly used alternative to perchloroethylene; hydrocarbon has a long history of use; and several companies manufacture hydrocarbon solvents for dry cleaning, whereas silicone and butylal are newer technologies and patented, making their availability more limited.

CPSC also considered requiring the use of only the hydrocarbon specification, rather than continuing to allow the use of the perchloroethylene specification in the current Standard. However, this alternative could increase costs by requiring all testing laboratories to change their dry cleaning specifications. CPSC did not select this option because, although perchloroethylene is being restricted in some locations, it is still available and widely used in the dry cleaning industry.

Laundering Specification. In addition to the AATCC LP1–2021 alternative adopted in this amendment, CPSC considered an alternative of continuing to require compliance with the laundering specification in AATCC TM124–2006, but with a reduced agitation speed. As staff's testing indicates, this alternative yields flammability results comparable to the current Standard and, therefore, would likely offer similar benefits to the AATCC LP1–2021 specification adopted. However, this alternative may have higher costs than the amendment because laboratory-grade washing machines are not sold pre-programmed to the reduced agitation speed settings, but they are sold pre-programmed with the AATCC LP1–2021 settings. Consequently, additional time and skilled labor resources would be necessary to program machines to meet the reduced agitation speed alternative, and there would be the potential for testing errors. CPSC did not select this option because testing laboratories are likely to already have and be familiar with AATCC LP1–2021 and have machines that comply with it since it is required for other standards and there are more washing machines on the market that meet the specifications in LP1–2021 than the reduced agitation speed parameters.

CPSC also considered amending the Standard to allow the use of either the AATCC LP1–2021 specifications or the AATCC TM124–2006 specifications. Similarly, CPSC considered amending the Standard to include the specifications in AATCC LP1–2021, while allowing for the continued use of AATCC TM124–2006 for a limited phase-out period. These alternatives would have minimal, if any, costs because they would allow testing laboratories to continue to use existing machines, while providing an option to obtain machines that are available on the market. CPSC did not select these options because they both would leave CPSC unable to test for compliance in accordance with one of the procedures in the Standard when CPSC's machines that comply with AATCC TM124–2006 reach the end of their useful lives; this would retain in the Standard an outdated and obsolete specification that is no longer possible to meet with products available on the market; and staff does not have information about an appropriate phase-out period for machines that comply with AATCC TM124–2006. Although CPSC did not select either of these alternatives, firms would still be able to continue to use machines that comply with AATCC TM124–2006, instead of machines that comply with AATCC LP1–2021, under the provisions in 16 CFR 1610.40.

For dryers, CPSC considered retaining the current provisions in the Standard, which reference AATCC TM124–2006, because dryers that meet this standard are still available on the market. This alternative would eliminate any costs associated with the amendment to dryer specifications. CPSC did not select this option because requiring the use of a single standard ensures compatible washing and drying requirements and reduces confusion and costs associated with obtaining and following two separate standards. In addition, because the dryer specifications in AATCC TM124–2006 and AATCC LP1–2021 are nearly identical, testing laboratories are unlikely to need to replace their dryers to meet the amendments and, for those that do, the allowance in 16 CFR 1610.40 would mitigate or eliminate that need.

C. Significant Issues Raised by Commenters

A final regulatory analysis must include a summary of significant issues raised by commenters in response to the preliminary regulatory analysis and CPSC's assessment of those comments. 15 U.S.C. 1193(j). CPSC did not receive any comments regarding the preliminary regulatory analysis in the NPR or any comments regarding costs, benefits, or alternatives, generally.

IX. Paperwork Reduction Act

This rule does not involve any new information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Standard does contain recordkeeping provisions, but this rule would not alter the estimated burden hours to establish or maintain associated records from the information collection approved previously.[12]

X. Regulatory Flexibility Act Analysis

When an agency is required to publish a proposed rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires that the agency prepare an initial regulatory flexibility analysis (IRFA) at the NPR stage and a final regulatory flexibility analysis (FRFA) at the final rule stage. An IRFA and FRFA must contain specific content that describes the impact that the rule would have on small businesses and other entities. 5 U.S.C. 603, 604. However, an IRFA and FRFA are not required if the head of the agency certifies that the rule

[12] *See* Office of Management and Budget (OMB) Control No. 3041–0024.

''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *Id.* 605(b). The agency must publish the certification in the **Federal Register** along with the NPR or final rule, include the factual basis for the certification, and provide the certification and statement to the Chief Counsel for Advocacy of the Small Business Administration. *Id.*[13]

In the NPR, the Commission certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. As support for the certification, the Commission noted that there are little to no estimated costs associated with the rule because the amendments reduce burdens on industry, maintain or expand existing requirements, or firms may rely on the allowance in 16 CFR 1610.40 to continue to use equipment that is being updated in the amendments. The factual basis for the certification is in Tab F of the NPR briefing package and Tab C of the final rule briefing package, but the NPR provided an overview, including information about the small entities to which the rule would apply; the potential economic impact of the rule on small entities; the criteria CPSC used for a ''significant economic impact'' and a ''substantial number''; assumptions and uncertainties; and a request for comments.

CPSC did not receive any comments regarding the certification or the economic analysis in the NPR, or any new cost, market, or other information or data that would change the economic impact assessments in the NPR. Therefore, because the amendments in this rule are consistent with those proposed in the NPR, the Commission certifies that the amendments will not have a significant economic impact on a substantial number of small entities, for the reasons stated in the NPR.

XI. Incorporation by Reference

This rule incorporates by reference AATCC LP1–2021. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, in the preamble, an agency must summarize the incorporated material, and discuss the ways in which the material is reasonably available to interested parties or how the agency worked to make the materials reasonably available. 1 CFR 51.5(a). In accordance with the OFR requirements, this preamble summarizes the provisions of AATCC LP1–2021 that the Commission incorporates by reference.

The standard is reasonably available to interested parties and interested parties can purchase a copy of AATCC LP1–2021 from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709; telephone (919) 549–8141; *www.aatcc.org.* Once this rule takes effect, a read-only copy of the standard will be available for viewing on the AATCC website. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

XII. Testing, Certification, and Notice of Requirements

Because the Standard applies to clothing and textiles intended to be used for clothing, it applies to both non-children's products and children's products. Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) includes requirements for testing and certifying that non-children's products and children's products comply with applicable mandatory standards issued under any statute the Commission administers, including the FFA. 15 U.S.C. 2063(a). The Commission's regulations on certificates of compliance are codified at 16 CFR part 1110.

Section 14(a)(1) addresses required testing and certifications for non-children's products and requires every manufacturer of a non-children's product, which includes the importer,[14] that is subject to a rule enforced by the Commission and imported for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under statutes enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation that applies to the product. 15 U.S.C. 2063(a)(1).

Sections 14(a)(2) and (a)(3) address testing and certification requirements specific to children's products. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). The CPSA and CPSC's regulations provide factors to consider when determining whether a product is a children's product. 15 U.S.C. 2052(a)(2); 16 CFR 1200.2. An accredited third party conformity assessment body (third-party lab) must test any product that is subject to a children's product safety rule for compliance with the applicable rule. 15 U.S.C. 2063(a)(2)(A); *see* 77 FR 31086, 31105 (May 24, 2012). After this testing, the manufacturer or private labeler of the product must certify that, based on the third-party lab's testing, the product complies with the children's product safety rule. 15 U.S.C. 2063(a)(2)(B).

The Commission must publish a notice of requirements (NOR) for third-party labs to obtain accreditation to assess conformity with a children's product safety rule. 15 U.S.C. 2063(a)(3)(A). The Commission must publish an NOR for new or revised children's products standards not later than 90 days before such rules or revisions take effect. *Id.* 2063(a)(3)(B)(vi). The Commission previously published an NOR for the Standard.[15] The NOR provided the criteria and process for CPSC to accept accreditation of third-party labs for testing products to 16 CFR part 1610. Part 1112 provides requirements for third-party labs to obtain accreditation to test for conformance with a children's product safety rule, including the Standard. 16 CFR 1112.15(b)(20).

The rule does not require third-party labs to change the way they test products for compliance with the Standard. The amendments to burn codes do not alter test protocols; they merely clarify existing requirements. The amendments regarding stop thread and dry cleaning specifications continue to allow the use of specifications consistent with the current Standard. Although the amendments regarding laundering specifications differ from the current Standard, 16 CFR 1610.40 provides an allowance for the continued use of laundering specifications under the current Standard. Accordingly, the existing accreditations that the Commission has accepted for testing to the Standard will cover testing to the revised Standard, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of their accreditations to reflect the

[13] For additional details regarding certifications, see *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* SBA Office of Advocacy (Aug. 2017), available at: *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/.*

[14] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

[15] *See* 75 FR 51016 (Aug. 18, 2010), amended at 76 FR 22608 (Apr. 22, 2011); 78 FR 15836 (Mar. 12, 2013).

revised Standard in the normal course of renewing their accreditations.

XIII. Environmental Considerations

The Commission's regulations address whether CPSC is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). 16 CFR 1021.5. Those regulations list CPSC actions that ''normally have little or no potential for affecting the human environment,'' and, therefore, fall within a ''categorical exclusion'' under the National Environmental Policy Act (42 U.S.C. 4321–4370h) and the regulations implementing it (40 CFR parts 1500 through 1508) and do not require an EA or EIS. 16 CFR 1021.5(c). Among those actions are rules that provide design or performance requirements for products, or revisions to such rules. *Id.* 1021.5(c)(1). Because this rule makes minimal revisions to the equipment and materials used for flammability testing in the Standard, and makes minor revisions for clarity, the rule falls within the categorical exclusion, and thus, no EA or EIS is required.

XIV. Preemption

In accordance with Executive Order (E.O.) 12988, *Civil Justice Reform,* CPSC states the preemptive effect of the rule, as follows. 61 FR 4729 (Feb. 7, 1996). Section 16 of the FFA provides that when a flammability standard or other regulation for a fabric, related material, or product is in effect under the FFA, no state or political subdivision may establish or continue in effect a flammability standard for such fabric, related material or product if it is designed to protect against the same risk as the standard under the FFA unless the state or political subdivision standard is identical to the Federal standard. 15 U.S.C. 1203(a). The federal government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk as the CPSC standard if the federal, state, or local requirement provides a higher degree of protection than the CPSC requirement. *Id.* 1203(b). In addition, states or political subdivisions of a state may apply for an exemption from preemption regarding a flammability standard or other regulation applicable to a fabric, related material, or product subject to a standard or other regulation in effect under the FFA. Upon such application, the Commission may issue a rule granting the exemption if it finds that: (1) compliance with the state or local standard would not cause the fabric, related material, or product to violate the federal standard; (2) the state or local standard provides a significantly higher degree of protection from the risk of occurrence of fire than the CPSC standard; and (3) the state or local standard does not unduly burden interstate commerce. *Id.* 1203(c).

XV. Effective Date

Section 4(b) of the FFA specifies that an amendment to a flammability standard shall take effect 12 months after the date the amendment is promulgated unless the Commission finds, for good cause shown, that an earlier or later effective date is in the public interest and publishes the reasons for that finding. 15 U.S.C. 1193(b).

The amendments to the Standard adopted in this notice take effect six months after publication of the final rule in the **Federal Register**. The Commission finds that this earlier effective date is in the public interest because the Standard provides an important safety benefit and the amendments provide some improvement to those benefits, with little to no costs. Moreover, a shorter effective date is justified given that the amendments should have minimal impacts, improve clarity, and relieve burdens; the prohibition on the use of perchloroethylene in dry cleaning in California took effect in January 2023; and washing machines that meet the Standard are no longer available.

Section 4(b) of the FFA also requires that an amendment of a flammability standard exempt fabrics, related materials, and products ''in inventory or with the trade'' on the date the amendment becomes effective, unless the Commission prescribes, limits, or withdraws that exemption because it finds that the product is ''so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended.'' Because the amendments adopted in this notice are intended to have minimal impacts, the Commission concludes that products in inventory or with the trade on the date the amendment becomes effective are exempt from the amended Standard.

XVI. Findings

As discussed in section II. Statutory Requirements for Revising the Standard, above, the FFA requires the Commission to make certain findings when it issues or amends a flammability standard. 15 U.S.C. 1193(b), (j)(2). This section discusses the support for those findings.

The amendments are needed to adequately protect the public against unreasonable risk of fire leading to death, injury, or significant property damage. Since the requirements in the Standard were promulgated in 1953, industry practices, equipment, materials, and procedures have evolved, making some parts of the Standard outdated or unclear. Because the Standard determines whether a fabric is safe for use in clothing, it is necessary to replace requirements for outdated and unavailable equipment, materials, and procedures and clarify unclear provisions, to ensure that flammability testing can be performed and that the results of the testing yield consistent, reliable, and accurate flammability classifications so that dangerously flammable fabrics are not used in clothing.

The amendments are reasonable, technologically practicable, and appropriate, and are stated in objective terms. The amendments streamline existing requirements and update specifications for outdated equipment, materials, and procedures. The amendments reflect changes recommended by industry members, and allow for the use of equipment, materials, and procedures that are commonly used by industry members, recognized in standards developed by industry, are readily available, and stated in objective terms.

The amendments are limited to fabrics, related materials, and products that present an unreasonable risk. The amendments do not alter the textiles or products that are subject to the Standard, which addresses products that present an unreasonable risk.

Voluntary standards. CPSC identified four relevant voluntary standards. AATCC Test Method 124–2018, *Appearance of Fabrics after Repeated Home Laundering,* includes provisions that are relevant to flammability testing and is similar to portions of the Standard, but is not a flammability standard. Rather, it is intended to evaluate the smoothness appearance of fabrics after repeated home laundering. As such, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing. AATCC's Laboratory Procedure 1–2021, *Home Laundering: Machine Washing,* also includes provisions that are relevant to flammability testing and is similar to portions of the Standard but is not a flammability standard. Rather, it is intended as a stand-alone laundering protocol, for use with other test methods, such as a flammability standard. Therefore, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing. ASTM D1230–22,

Standard Test Method for Flammability of Apparel Textiles, is similar to the Standard, but contains different laundering specifications, terminology, and burn codes, and it does not address issues identified in this rule, such as clarification of the stop thread specification. Canadian General Standards Board Standard CAN/CGSB–4.2 No. 27.5, *Textile Test Method Flame Resistance—45° Angle Test—One-Second Flame Impingement,* also is similar to the Standard, but includes several differences from longstanding provisions in the Standard, such as stop thread specifications. As such, adopting provisions in the Canadian standard would unnecessarily alter the Standard when the purpose of the amendments in this rule is to minimize changes to flammability test results while improving the clarity and usability of the Standard. Compliance with these voluntary standards is not likely to result in the elimination or adequate reduction of the risk of injury identified by the Commission. The amendments will better address the risk of injury than these voluntary standards by retaining the longstanding provisions in the Standard that have been demonstrated to effectively address the flammability hazard, while making minimal revisions to ensure the accuracy of flammability classifications by improving the clarity of the requirements and updating outdated equipment and materials.

Relationship of benefits to costs. Because the amendments reflect current industry practices and provide needed clarifications, the anticipated benefits and costs are expected to be small and bear a reasonable relationship to each other.

Least burdensome requirement. The amendments do not substantively change the Standard but provide changes that are necessary for clarity and so that testing laboratories may obtain necessary materials and equipment to conduct testing. Several amendments expand the permissible range of materials or equipment to reduce burdens. For revisions that include new equipment or materials, the amendments either allow use of the new materials and equipment as additional alternatives, or the Commission provides information to support the continued use of equipment or materials in the current Standard under 16 CFR 1610.40.

XVII. Congressional Review

The FFA requires CPSC to transmit a copy of a flammability regulation to the Secretary of the Senate and the Clerk of the House of Representatives. 15 U.S.C. 1204. The Congressional Review Act (CRA; 5 U.S.C. 801–808) similarly states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' A ''major rule'' is one that OIRA finds has resulted in or is likely to result in:

- an annual effect on the economy of $100,000,000 or more;
- a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or
- significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises in domestic and export markets.

5 U.S.C. 804(2).

Because the costs and benefits associated with this rule are expected to be minimal, OIRA determined that this is not a major rule. To comply with the CRA and FFA, CPSC will submit the required information to the appropriate Congressional offices and the Comptroller General.

XVIII. Conclusion

For the reasons stated in this preamble, the Commission concludes that the amendments to the Standard adopted in this notice are needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant damage.

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Incorporation by reference, Reporting and recordkeeping requirements, Textiles, Warranties.

For the reasons discussed in the preamble, the Commission amends title 16 of the Code of Federal Regulations by revising part 1610 to read as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

■ 1. The authority citation for part 1610 continues to read as follows:

Authority: 15 U.S.C. 1191–1204.

■ 2. Amend § 1610.2 by revising paragraphs (a) and (p) to read as follows:

§ 1610.2 Definitions.

* * * * *

(a) *Base burn* (also known as base fabric ignition or fusing) means the point at which the flame burns the ground (base) fabric of a raised surface textile fabric and provides a self-sustaining flame. Base burns, used to establish a Class 2 or 3 fabric, are those burns resulting from surface flash that occur on specimens in places other than the point of impingement (test result code SFBB) when the warp and fill yarns of a raised surface textile fabric undergo combustion. Base burns can be identified by an opacity change, scorching on the reverse side of the fabric, or when a physical hole is evident.

* * * * *

(p) *Stop thread supply* means 3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 40 ±5.

* * * * *

■ 3. Amend § 1610.4 by revising paragraphs (a)(2), (b)(2), (c)(2), and Table 1 to read as follows:

§ 1610.4 Requirements for classifying textiles.

(a) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after being refurbished as described in § 1610.6(a) and (b), when tested as described in § 1610.6, shall be classified as Class 1, Normal Flammability, when the burn time is more than 7.0 seconds, or when they burn with a rapid surface flash (0.0 to 7.0 seconds), provided the intensity of the flame is so low as not to ignite or fuse the base fabric.

(b) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after being refurbished as described in § 1610.6(a) and (b), when tested as described in § 1610.6, shall be classified as Class 2, Intermediate Flammability, when the burn time is from 4.0 through 7.0 seconds, both inclusive, and the base fabric starts burning at places other than the point of impingement as a result of the surface flash (test result code SFBB).

(c) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after refurbishing as described in § 1610.6(a) and § 1610.6(b), when tested as described in § 1610.6, shall be classified as Class 3, Rapid and Intense Burning, when the time of flame spread is less than 4.0 seconds, and the base fabric starts burning at places other than the point of impingement as a result of the surface flash (test result code SFBB).

TABLE 1 TO § 1610.4—SUMMARY OF TEST CRITERIA FOR SPECIMEN CLASSIFICATION

[See § 1610.7]

Class	Plain surface textile fabric	Raised surface textile fabric
1	Burn time is 3.5 seconds or more. ACCEPTABLE (3.5 seconds is a pass).	(1) Burn time is greater than 7.0 seconds; or (2) Burn time is less than or equal to 7.0 seconds with no SFBB test result code. Exhibits rapid surface flash only. ACCEPTABLE—Normal Flammability.
2	Class 2 is not applicable to plain surface textile fabrics	Burn time is 4.0 to 7.0 seconds (inclusive) with base burn (SFBB). ACCEPTABLE—Intermediate Flammability.
3	Burn time is less than 3.5 seconds. NOT ACCEPTABLE	Burn time is less than 4.0 seconds with base burn (SFBB). NOT ACCEPTABLE—Rapid and Intense Burning.

Note: SFBB poi and SFBB poi* are not considered a base burn for determining Class 2 and 3 fabrics.

■ 4. Amend § 1610.5 by revising paragraphs (a)(2)(ii), (b)(6), and (b)(7) to read as follows:

§ 1610.5 Test apparatus and materials.

(a) * * *

(2) * * *

(ii) *Stop thread supply.* This supply, consisting of a spool of 3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 40 ±5 Tex, shall be fastened to the side of the chamber and can be withdrawn by releasing the thumbscrew holding it in position.

* * * * *

(b) * * *

(6) *Commercial dry cleaning machine.* The commercial dry cleaning machine shall be capable of providing a complete automatic dry-to-dry cycle using perchloroethylene solvent or hydrocarbon solvent and a cationic dry cleaning detergent as specified in § 1610.6(b)(1)(i).

(7) *Dry cleaning solvent.* The solvent shall be perchloroethylene, commercial grade, or hydrocarbon solvent, commercial grade.

* * * * *

■ 5. Amend § 1610.6 by revising paragraphs (b)(1)(i)(A), (b)(1)(ii), and(b)(1)(iii) to read as follows:

§ 1610.6 Test procedure.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) All samples shall be dry cleaned before they undergo the laundering procedure. Samples shall be dry cleaned in a commercial dry cleaning machine, using one of the following prescribed conditions:

(*1*) For perchloroethylene:

(i) Solvent: Perchloroethylene, commercial grade.

(ii) Detergent class: Cationic.

(iii) Cleaning time: 10–15 minutes.

(iv) Extraction time: 3 minutes.

(v) Drying Temperature: 60–66 °C (140–150 °F).

(vi) Drying Time: 18–20 minutes.

(vii) Cool Down/Deodorization time: 5 minutes.

(*2*) For hydrocarbon:

(i) Solvent: Hydrocarbon.

(ii) Detergent Class: Cationic.

(iii) Cleaning Time: 20–25 minutes.

(iv) Extraction Time: 4 minutes.

(v) Drying Temperature: 60–66 °C (140–150 °F).

(vi) Drying Time: 20–25 minutes.

(vii) Cool Down/Deodorization Time: 5 minutes.

Samples shall be dry cleaned in a load that is 80% of the machine's capacity.

* * * * *

(ii) *Laundering procedure.* The sample, after being subjected to the dry cleaning procedure, shall be washed and dried one time in accordance with section 9.2, section 9.4, section 12.2(A), Table I ''(1) Normal,'' ''(IV) Hot,'' and Table VI ''(Aiii) Permanent Press'' of AATCC LP1–2021 (incorporated by reference, see § 1610.6(b)(1)(iii)). Washing shall be performed in accordance with the detergent (powder) specified in section 9.4 of AATCC LP1–2021; parameters for water level, agitator speed, stroke length, washing time, spin speed, spin time, and wash temperature specified in Table I, ''Standard Washing Machine Parameters,'' ''(1) Normal'' and ''(IV) Hot'' of AATCC LP1–2021; and a maximum wash load as specified in section 9.2 of AATCC LP1–2021, which may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 12.2(A) of AATCC LP1–2021, Tumble Dry, using the exhaust temperature and cool down time specified in Table VI, ''Standard Tumble Dryer Parameters,'' ''(Aiii) Permanent Press'' of AATCC LP1–2021.

(iii) AATCC LP1–2021, Laboratory Procedure for Home Laundering: Machine Washing, 2021, is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the AATCC website. You may obtain a copy from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709; telephone (919) 549–8141; *www.aatcc.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 710, 4330 East-West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 6. Amend § 1610.7 by revising paragraph (b) to read as follows:

§ 1610.7 Test sequence and classification criteria.

* * * * *

(b) *Test sequence and classification criteria.* (1) Step 1, Plain Surface Textile Fabrics in the original state.

(i) Conduct preliminary tests in accordance with § 1610.6(a)(2)(i) to determine the fastest burning direction of the fabric.

(ii) Prepare and test five specimens from the fastest burning direction. The burn times determine whether to assign the preliminary classification and proceed to § 1610.6(b) or to test five additional specimens.

(iii) Assign the preliminary classification of Class 1, Normal Flammability, and proceed to § 1610.6(b) when:

(A) There are no burn times; or

(B) There is only one burn time, and it is equal to or greater than 3.5 seconds; or

(C) The average burn time of two or more specimens is equal to or greater than 3.5 seconds.

(iv) Test five additional specimens when there is either only one burn time, and it is less than 3.5 seconds; or there is an average burn time of less than 3.5

seconds. Test these five additional specimens from the fastest burning direction as previously determined by the preliminary specimens. The burn times for the 10 specimens determine whether to:

(A) Stop testing and assign the final classification as Class 3, Rapid and Intense Burning, only when there are two or more burn times with an average burn time of less than 3.5 seconds; or

(B) Assign the preliminary classification of Class 1, Normal Flammability, and proceed to § 1610.6(b) when there are two or more burn times with an average burn time of 3.5 seconds or greater.

(v) If there is only one burn time out of the 10 test specimens, the test is inconclusive. The fabric cannot be classified.

(2) Step 2, Plain Surface Textile Fabrics after refurbishing in accordance with § 1610.6(b)(1).

(i) Conduct preliminary tests in accordance with § 1610.6(a)(2)(i) to determine the fastest burning direction of the fabric.

(ii) Prepare and test five specimens from the fastest burning direction. The burn times determine whether to stop testing and assign the preliminary classification or to test five additional specimens.

(iii) Stop testing and assign the preliminary classification of Class 1, Normal Flammability, when:

(A) There are no burn times; or

(B) There is only one burn time, and it is equal to or greater than 3.5 seconds; or

(C) The average burn time of two or more specimens is equal to or greater than 3.5 seconds.

(iv) Test five additional specimens when there is only one burn time, and it is less than 3.5 seconds; or there is an average burn time less than 3.5 seconds. Test five additional specimens from the fastest burning direction as previously determined by the preliminary specimens. The burn times for the 10 specimens determine the preliminary classification when:

(A) There are two or more burn times with an average burn time of 3.5 seconds or greater. The preliminary classification is Class 1, Normal Flammability; or

(B) There are two or more burn times with an average burn time of less than 3.5 seconds. The preliminary and final classification is Class 3, Rapid and Intense Burning; or

(v) If there is only one burn time out of the 10 specimens, the test results are inconclusive. The fabric cannot be classified.

(3) Step 1, Raised Surface Textile Fabric in the original state.

(i) Determine the area to be most flammable per § 1610.6(a)(3)(i).

(ii) Prepare and test five specimens from the most flammable area. The burn times and visual observations determine whether to assign a preliminary classification and proceed to § 1610.6(b) or to test five additional specimens.

(iii) Assign the preliminary classification and proceed to § 1610.6(b) when:

(A) There are no burn times. The preliminary classification is Class 1, Normal Flammability; or

(B) There is only one burn time and it is less than 4.0 seconds without an SFBB test result code, or it is 4.0 seconds or greater with or without am SFBB test result code. The preliminary classification is Class 1, Normal Flammability; or

(C) There are no base burns (SFBB) regardless of the burn time(s). The preliminary classification is Class 1, Normal Flammability; or

(D) There are two or more burn times with an average burn time of 0.0 to 7.0 seconds with a surface flash only. The preliminary classification is Class 1, Normal Flammability; or

(E) There are two or more burn times with an average burn time greater than 7.0 seconds with any number of base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(F) There are two or more burn times with an average burn time of 4.0 through 7.0 seconds (both inclusive) with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(G) There are two or more burn times with an average burn time less than 4.0 seconds with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(H) There are two or more burn times with an average burn time of 4.0 through 7.0 seconds (both inclusive) with two or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability.

(iv) Test five additional specimens when the tests of the initial five specimens result in either of the following: There is only one burn time and it is less than 4.0 seconds with a base burn (SFBB); or the average of two or more burn times is less than 4.0 seconds with two or more base burns (SFBB). Test these five additional specimens from the most flammable area. The burn times and visual observations for the 10 specimens will determine whether to:

(A) Stop testing and assign the final classification only if the average burn time for the 10 specimens is less than 4.0 seconds with three or more base burns (SFBB). The final classification is Class 3, Rapid and Intense Burning; or

(B) Assign the preliminary classification and continue on to § 1610.6(b) when:

(*1*) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(*2*) The average burn time is 4.0 to 7.0 seconds (both inclusive) with no more than 2 base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(*3*) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(*4*) The average burn time is 4.0 to 7.0 seconds (both inclusive) with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(v) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

(4) Step 2, Raised Surface Textile Fabric After Refurbishing in accordance with § 1610.6(b).

(i) Determine the area to be most flammable in accordance with § 1610.6(a)(3)(i).

(ii) Prepare and test five specimens from the most flammable area. Burn times and visual observations determine whether to stop testing and determine the preliminary classification or to test five additional specimens.

(iii) Stop testing and assign the preliminary classification when:

(A) There are no burn times. The preliminary classification is Class 1, Normal Flammability; or

(B) There is only one burn time, and it is less than 4.0 seconds without an SFBB test result code; or it is 4.0 seconds or greater with or without an SFBB test result code. The preliminary classification is Class 1, Normal Flammability; or

(C) There are no base burns (SFBB) regardless of the burn time(s). The preliminary classification is Class 1, Normal Flammability; or

(D) There are two or more burn times with an average burn time of 0.0 to 7.0 seconds with a surface flash only. The preliminary classification is Class 1, Normal Flammability; or

(E) There are two or more burn times with an average burn time greater than 7.0 seconds with any number of base burns (SFBB). The preliminary

classification is Class 1, Normal Flammability; or

(F) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(G) There are two or more burn times with an average burn time less than 4.0 seconds with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(H) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with two or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability.

(iv) Test five additional specimens when the tests of the initial five specimens result in either of the following: There is only one burn time, and it is less than 4.0 seconds with a base burn (SFBB); or the average of two or more burn times is less than 4.0 seconds with two or more base burns (SFBB).

(v) If required, test five additional specimens from the most flammable area. The burn times and visual observations for the 10 specimens determine the preliminary classification when:

(A) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(B) The average burn time is less than 4.0 seconds with three or more base burns (SFBB). The preliminary and final classification is Class 3, Rapid and Intense Burning; or

(C) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(D) The average burn time is 4.0 to 7.0 seconds (both inclusive), with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(E) The average burn time is 4.0 to 7.0 seconds (both inclusive), with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(vi) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

■ 7. Amend § 1610.8 by revising paragraph (b) to read as follows:

§ 1610.8 Reporting results.

* * * * *

(b) *Test result codes.* The following are definitions for the test result codes, which shall be used for recording flammability results for each specimen that is burned.

(1) For Plain Surface Textile Fabrics:

(i) DNI Did not ignite.

(ii) IBE Ignited, but extinguished.

(iii) _._sec. Actual burn time measured and recorded by the timing device.

(2) For Raised Surface Textile Fabrics:

(i) _._SFBB Time in seconds, surface flash base burn starting at places other than the point of impingement as a result of surface flash.

(ii) _._SFBB poi Time in seconds, surface flash base burn starting at the point of impingement.

(iii) _._SFBB poi* Time in seconds, surface flash base burn possibly starting at the point of impingement. The asterisk is accompanied by the following statement: ''Unable to make absolute determination as to source of base burns.'' This statement is added to the result of any specimen if there is a question as to origin of the base burn.

(iv) _._SF only Time in seconds, surface flash only. No damage to the base fabric.

(v) SF poi Surface flash, at the point of impingement only (equivalent to ''did not ignite'' for plain surfaces).

(vi) SF uc Surface flash, under the stop thread, but does not break the stop thread.

(vii) SF pw Surface flash, part way. No time shown because the surface flash did not reach the stop thread.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–23388 Filed 10–24–23; 8:45 am]

BILLING CODE 6355–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–280; RM–11957; DA 23–980; FR ID 179873]

Television Broadcasting Services Colusa, California

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau) has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by One Ministries, Inc. (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *2 to Colusa, California (Colusa), in the Table of TV Allotments as the community's first local television service. The Petitioner filed comments in support of the petition, as required by the Commission's rules, reaffirming its commitment to apply for channel *2, and if authorized, to construct the facility.

DATES: Effective November 24, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov;* or Emily Harrison, Media Bureau, at (202) 418–1665 or *Emily.Harrison@fcc.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 57031 on August 22, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel *2. No other comments were filed.

The Bureau believes the public interest would be served by allotting channel *2 at Colusa, which has a population of 6,411 and clearly qualifies for community of license status for allotment purposes. As stated in the NPRM, Petitioner provides that Colusa is the seat of Colusa County and is known for its agricultural production. The Petitioner further states that Colusa has a mayor, mayor pro tem, and three council members; police, public works, parks and recreation, planning, fire, and utility departments; a library, airport, and numerous businesses and places of worship; and its own zip code. In addition, the proposal would result in a first local service to Colusa under the Commission's second allotment priority. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *2 can be allotted to Colusa consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the rules. In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Colusa is encompassed by the 35 dBμ contour.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–280; RM–11957; DA 23–980, adopted October 16, 2023, and released October 16, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements

subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the table under California by adding an entry for Colusa to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
California	
* * * * *	
Colusa	*2
* * * * *	

[FR Doc. 2023–23467 Filed 10–24–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes resulting from a section of the National Defense Authorization Act for Fiscal Year 2017 that made organizational changes within the Office of the Secretary of Defense.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: Section 901 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) amended title 10, United States Code (U.S.C.) to strike 10 U.S.C. 133 and add two new sections 10 U.S.C. 133a, Under Secretary of Defense for Research and Engineering; and 10 U.S.C. 133b, Under Secretary of Defense for Acquisition and Sustainment, effective February 1, 2018. This technical amendment provides editorial changes to fully align the DFARS with the name redesignations necessitated by section 901(b) of the NDAA for FY 2017 from Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)).

The DFARS has been incrementally updated to implement the section 901(b) name changes when publishing other final rules that included these organizational references; however, this technical amendment is needed to accomplish all remaining changes required. Concurrently, the previously designated USD(AT&L) Defense Procurement and Acquisition Policy office was changed to USD(A&S) Defense Pricing and Contracting, and this change is included in this technical amendment. Certain internet links and email addresses are updated and other minor edits are made to add pointers to DFARS Procedures, Guidance, and Information.

List of Subjects in 48 CFR Parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 202, 203, 205, 206, 207, 208, 209, 215, 217, 219, 222, 225, 230, 231, 232, 236, 242, 243, 249, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Revise section 201.105–3 to read as follows:

201.105–3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available at *https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.*

201.107 [Amended]

■ 3. Amend section 201.107 in paragraph (2) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

■ 4. Amend section 201.201–1—

■ a. By revising paragraph (d)(i) introductory text;

■ b. In paragraph (d)(i)II by removing ''Recommendation'' and adding ''RECOMMENDATION'' in its place;

■ c. In paragraph (d)(i)III by removing ''Discussion'' and adding ''DISCUSSION'' in its place;

■ d. In paragraph (d)(i)IV by removing ''Collaterals'' and adding ''COLLATERALS'' in its place; and

■ e. By revising paragraph (d)(i)(V).

The revisions read as follows:

201.201–1 The two councils.

* * * * *

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director

of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council via email at *osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.*

* * * * *

V. DEVIATIONS: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment).

* * * * *

201.301 [Amended]

■ 5. Amend section 201.301 in paragraph (b) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L))'' and adding ''Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S))'' in its place.

■ 6. Amend section 201.304—

■ a. In paragraph (1)(i) introductory text by removing ''USD (AT&L)'' and adding ''USD(A&S)'' in its place;

■ b. By revising paragraph (1)(ii);

■ c. In paragraph (2)(ii) by removing ''USD(AT&L)'' and adding ''USD(A&S)'' in its place;

■ d. In paragraph (4) by removing ''OUSD(AT&L)DPAP'' and adding ''USD(A&S)DPC'' in its place;

■ e. In paragraph (5) by removing ''USD(AT&L)'' and ''OUSD(AT&L)DPAP'' and adding ''USD(A&S)'' and ''OUSD(A&S)DPC'' in their places, respectively; and

■ f. By revising paragraph (6).

The revisions read as follows:

201.304 Agency control and compliance procedures.

* * * * *

(1) * * *

(ii) Except as provided in paragraph (2) of this section, the USD(A&S) has delegated authority to the Principal Director, Defense Pricing and Contracting (DPC) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

* * * * *

(6) The Principal Director, DPC publishes changes to the DFARS in the **Federal Register** at *https://www.federalregister.gov* and on the DPC website at *https://www.acq.osd.mil/dpap/dars/change_notices.html.* Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

■ 7. Amend section 201.402 by—

■ a. Revising paragraph (1) introductory text;

■ b. Amending paragraph (1)(ii) by removing ''Subpart'' and adding ''subpart'' in its place wherever it appears; and

■ c. Revising paragraph (2) introductory text.

The revisions read as follows:

201.402 Policy.

(1) The Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC), is the approval authority within DoD for any individual or class deviation from—

* * * * *

(2) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require OUSD(A&S)DPC approval through the Director of the DAR Council via email at *osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.* At a minimum, each request must—

* * * * *

201.404 [Amended]

■ 8. Amend section 201.404 in paragraph (b)(i) by removing ''OUSD(AT&L)DPAP'' and adding ''OUSD(A&S)DPC'' in its place.

* * * * *

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 9. Amend section 202.101—

■ a. In the definition of ''Departments and agencies'' by removing ''the Marine Corps is a part of the Department of the Navy'' and adding ''the Marine Corps is a part of the Department of the Navy, and the Space Force is a part of the Air Force'' in its place and removing ''the Space Development Agency,'';

■ b. In the definition of ''Head of the agency'' by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Director of Defense Procurement and Acquisition Policy'' and adding ''Under Secretary of Defense (Acquisition and Sustainment), and the Principal Director, Defense Pricing and Contracting'' in its place;

■ c. In the definition of ''Procedures, Guidance, and Information (PGI)'' in paragraph (4) by removing ''electronically at *http://www.acq.osd.mil/dpap/dars/index.htm*'' and adding ''at *https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html*'' in its place; and

■ d. By revising the definition of ''Senior procurement executive''.

The revision reads as follows:

202.101 Definitions.

* * * * *

Senior procurement executive means, for DoD—

(1) Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition and Sustainment);

(2) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(3) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(4) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition); and

(5) The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition and Sustainment).

* * * * *

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLITS OF INTEREST

203.703 [Amended]

■ 10. Amend section 203.703 by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 11. Revise section 205.205 to read as follows:

205.205 Special situations.

See PGI 205.205 for instructions on the solicitation notice regarding timely definitization of equitable adjustments for change orders under construction contracts.

205.303 [Amended]

■ 12. Amend section 205.303 in paragraph (a)(ii)(A) by removing ''Office of the Assistant Secretary of Defense (Public Affairs)'' and adding ''Office of the Assistant to the Secretary of Defense for Public Affairs'' in its place.

PART 206—COMPETITION REQUIREMENTS

206.302–5 [Amended]

■ 13. Amend section 206.302–5 in paragraph (c)(i)(B) by removing ''Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

206.304 [Amended]

■ 14. Amend section 206.304 in paragraph (a)(4) introductory text by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

PART 207—ACQUISITION PLANNING

207.106 [Amended]

■ 15. Amend section 207.106 in paragraph (S–73) by removing ''Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) and ''USD (AT&L)'' and adding ''Under Secretary of Defense for Acquisition and Sustainment (USD(A&S))'' and ''USD(A&S)'' in their places, respectively.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7002 [Amended]

■ 16. Amend section 208.7002 in paragraphs (a)(1) and (2) and paragraph (b) by removing ''Deputy Under Secretary of Defense (Logistics)'' and adding ''Deputy Assistant Secretary of Defense (Logistics)'' in its place.

PART 209—CONTRACTOR QUALIFICATIONS

209.406–2 [Amended]

■ 17. Amend section 209.406–2 in paragraph (1)(ii) by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting,'' in its place.

209.570–2 [Amended]

■ 18. Amend section 209.570–2 in paragraph (c)(2) by removing ''Under Secretary of Defense for Acquisition, Technology, and Logistics. (Also see 209.570–3(b).)'' and adding ''Under Secretary of Defense for Acquisition and Sustainment. Also, see 209.570–3(b).'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.403–1 [Amended]

■ 19. Amend section 215.403–1 in paragraph (c)(4)(B) by removing ''Director, Defense Pricing and Contracting, Pricing and Contracting Initiatives (DPC/PCI)'' and adding ''Office of the Principal Director, Defense Pricing and Contracting, (Price, Cost and Finance)'' in its place.

■ 20. Add section 215.406 to read as follows:

215.406 Documentation.

■ 21. Add section 215.406–2 to read as follows:

215.406–2 Certificate of current cost or pricing data.

See PGI 215.406–2 for additional information and guidance on Certificates of Current Cost or Pricing Data.

PART 217—SPECIAL CONTRACTING METHODS

217.7405 [Amended]

■ 22. Amend section 217.7405 in paragraph (b) by removing ''Office of the Director, Defense Procurement and Acquisition Policy'' and adding ''Office of the Principal Director, Defense Pricing and Contracting (Contract Policy) at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil*'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.800 [Amended]

■ 23. Amend section 219.800 in paragraph (a) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.1403 [Amended]

■ 24. Amend section 222.1403 in paragraph (c)(i) by removing ''Under Secretary of Defense for Acquisition'' and adding ''Assistant Secretary of Defense for Acquisition'' in its place.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

■ 25. Amend section 225.103 in paragraph (a)(i)(B) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

■ 26. Amend section 225.401 by revising paragraph (a)(2)(A) introductory text to read as follows:

225.401 Exceptions.

(a) * * *

(2) * * *

(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC). Approval by OUSD(A&S)DPC is not required if—

* * * * *

225.403 [Amended]

■ 27. Amend section 225.403 in paragraph (c)(ii) introductory text by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

225.770–5 [Amended]

■ 28. Amend section 225.770–5 in paragraph (c)(1) by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

225.871–5 [Amended]

■ 29. Amend section 225.871–5—

■ a. In the section heading by removing ''Subcontracting'' and adding ''subcontracting'' in its place; and

■ b. In paragraph (a) by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

225.871–7 [Amended]

■ 30. Amend section 225.871–7 in paragraph (a)(1) by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

225.872–2 [Amended]

■ 31. Amend section 225.872–2 in paragraph (a)(2)(ii) by removing ''Deputy Under Secretary of Defense (Industrial Affairs)'' and adding ''Deputy Assistant Secretary of Defense for Industrial Base Policy'' in its place.

225.872–3 [Amended]

■ 32. Amend section 225.872–3 in paragraph (e)(4) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

■ 33. Amend section 225.872–5 by revising paragraph (a) to read as follows:

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Office of the Principal Director, Defense Pricing and Contracting (Contract Policy) via email at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.*

* * * * *

225.7002–2 [Amended]

■ 34. Amend section 225.7002–2 in paragraph (b)(1)(i) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

225.7003–3 [Amended]

■ 35. In section 225.7003–3 amend paragraph (b)(2)(ii) by removing ''Director, Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 36. Add section 230.201 to read as follows:

230.201 Contract requirements.

■ 37. Amend section 230.201–5 by revising paragraph (a)(1)(A) introductory text, paragraph (a)(1)(B), and paragraph (e) to read as follows:

230.201–5 Waiver.

(a) * * *

(1) * * *

(A) The military departments and the Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment)—

* * * * *

(B) Follow the procedures at PGI 230.201–5(a)(1) for submitting waiver requests to the Principal Director, DPC.

* * * * *

(e) By November 30th of each year, the military departments shall provide a report to the Office of the Principal Director, DPC (Contract Policy) of all waivers granted under FAR 30.201–5(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $15 million or more. See PGI 230.201–5(e) for format and guidance for the report. The Principal Director, DPC, will submit a consolidated report to the CAS Board and the congressional defense committees.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–70 [Amended]

■ 38. Amend section 231.205–70 in paragraph (c)(4)(ii)(A) by removing ''Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

PART 232—CONTRACT FINANCING

232.006–5 [Amended]

■ 39. Amend section 232.006–5 by removing ''Departments and agencies'' and ''Under Secretary of Defense (Acquisition, Technology, and Logistics), through the Director of Defense Procurement and Acquisition Policy'' and adding ''Departments and agencies,'' and ''Under Secretary of Defense (Acquisition and Sustainment) through the Principal Director, Defense Pricing and Contracting'' in their places, respectively.

■ 40. Amend section 232.070 by revising paragraphs (a) and (b) to read as follows:

232.070 Responsibilities.

(a) The Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPC) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&S)DPC.

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&S)DPC for consideration through the department/agency Contract Finance Committee members (also see subpart 201.4 for deviation request and approval procedures).

* * * * *

232.611 [Amended]

■ 41. Amend section 232.611 in paragraph (a) introductory text by removing ''The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)'' and adding ''The Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

232.7101 [Amended]

■ 42. Amend section 232.7101—

■ a. In paragraph (b) by removing ''Director, Defense Procurement and Acquisition Policy (DPAP)'' and adding ''Principal Director, Defense Pricing and Contracting (DPC)'' in its place; and

■ b. In paragraph (c) by removing ''Director, DPAP'' and adding ''Principal Director, DPC'' in its place.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 43. Add section 236.211 to read as follows:

236.211 Distribution of advance notices and solicitations.

See PGI 236.211 for instructions on reporting data for definitization of requests for equitable adjustment.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.602 [Amended]

■ 44. Amend section 242.602 in paragraph (c)(2) by removing ''Director of Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place.

PART 243—CONTRACT MODIFICATIONS

■ 45. Amend section 243.204–70–1 by revising paragraph (b) to read as follows:

243.204–70–1 Scope.

* * * * *

(b) Unpriced change orders for foreign military sales and special access programs are not subject to this section, but the contracting officer shall apply the policy and procedures to them to the maximum extent practicable. If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this section for an

unpriced change order for a foreign military sale or a special access program, the contracting officer shall provide prior notice, through agency channels, to the Office of the Principal Director, Defense Pricing and Contracting (Contract Policy) via email at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.*

PART 249—TERMINATION OF CONTRACTS

■ 46. Amend section 249.7000 by revising paragraph (a)(1) to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, ''Canadian Agreement'' (for a copy of the LOA or for questions on its currency, contact the Office of the Principal Director, Defense Pricing and Contracting (Contract Policy), at *osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil;*

* * * * *

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1–70 [Amended]

■ 47. Amend section 250.102–1–70 in paragraph (b)(1) by removing ''USD (AT&L)'' and adding ''USD(A&S)'' in its place, and in paragraph (b)(2) by removing ''USD(AT&L)'' and adding ''USD(A&S)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7040 [Amended]

■ 48. Amend section 252.225–7040—

■ a. By removing the clause date ''(OCT 2015)''; and adding ''(OCT 2023)'' in its place; and

■ b. In paragraph (g)(1) of the clause by removing ''USD (AT&L)'' and adding ''the Under Secretary of Defense (Acquisition and Sustainment)'' in its place.

[FR Doc. 2023–23435 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2023–0022]

RIN 0750–AL88

Defense Federal Acquisition Regulation Supplement: Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region (DFARS Case 2023–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 87 FR 76980 on December 16, 2022, to implement section 848 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) FY 2022 (Pub. L. 117–81). DoD subsequently published an interim rule in the **Federal Register** at 88 FR 37794 on June 9, 2023, to implement section 855 of the NDAA for FY 2023 (Pub. L. 117–263). Section 855 repealed section 848 of the NDAA for FY 2022, including the requirement for a certification from offerors for contracts with DoD stating the offeror has made a good faith effort to determine that forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR) was not or will not be used in the performance of a contract. Section 855 requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in performance of a DoD contract. The interim rule required offerors to represent, by submission of an offer, that they have made a good faith effort to determine that forced labor from XUAR will not be used in performance of a contract resulting from the solicitation.

One respondent submitted public comments in response to the interim rule. The interim rule has been converted to a final rule, without change.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided, as follows:

1. Strong Support for the Rule

Comment: The respondent strongly supported the interim rule. The respondent noted that the rule helps to preserve the United States' global leadership on human rights and protects national security.

Response: DoD acknowledges the support for the rule.

2. Supply Chain

Comment: The respondent relayed concerns regarding implementation of the interim rule that requires offerors to make a good faith effort to gain full knowledge of their entire supply chain, including the procurement of commercial items and components. The respondent noted the Chinese economy can be opaque and further conveyed it can be difficult for prime contractors to obtain accurate supplier information, especially if responses were required within an accelerated timeframe. Additionally, further down the supply chain (*i.e.,* subcontractors, vendors, and other suppliers at all tiers), including for the procurement of commercial items and components, it can be exceedingly difficult for prime contractors to obtain accurate information.

Response: There are no exceptions to the requirements that offerors or DoD contractors make a good faith effort to determine that forced labor from XUAR will not be used in the performance of the DoD contract. DoD has determined to make this law applicable to contracts for the acquisition of commercial services and commercial products, including commercially available off-the-shelf (COTS) items, in order to promote the overarching public policy, except products or services purchased using the Governmentwide commercial purchase card or the Standard Form (SF) 44, Purchase Order-Invoice Voucher.

3. Additional Definition

Comment: A respondent stated that in the background information of the rule, DoD should also define the term

''knowingly procure'' consistent with what DoD officials must do to comply with that requirement.

Response: The final rule as implemented is in accordance with section 855 of the NDAA for FY 2023, 10 U.S.C. 2496(b), and 10 U.S.C. 4661. Consequently, there is no definition in the rule for the term ''knowingly procure''. The rule as implemented complies with all definitions as outlined in the applicable statutes.

4. Good Faith Effort

Comment: The respondent identified the policy implementation of section 889 of the NDAA for FY 2019 and urged adoption of the language similar to the provision as implemented at Federal Acquisition Regulation 52.204–26, Covered Telecommunications Equipment or Services-Representation, that required offerors to provide representation utilizing a standard of ''reasonable inquiry'' (although section 889 is outside the scope of the statutory requirements of this rule). The respondent recommended that DoD should use the standard of ''reasonable inquiry'' in the place of the standard of a good faith effort as it specifically pertains to a contractor's representation that no products associated with forced labor from XUAR are present in its offer or during performance under a contract.

Response: The rule implements section 855 of the NDAA for FY 2023, which requires DoD to issue policy to require that an offeror or awardee of a DoD contract make a good faith effort to determine that forced labor from XUAR will not be used. Section 855 specifically requires use of the standard of a good faith effort. The final rule as written is consistent with the requirements of section 855.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Services, and for Commercial Products, Including COTS Items

The interim rule amended the solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Representation, and the contract clause at DFARS 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region. The clause at DFARS 252.225–7060 is prescribed for use in solicitations and contracts utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations using FAR part 12 procedures for the acquisition of commercial services and commercial products including COTS items. Consistent with the determination that DoD made with regard to the application of the requirements of section 855 of the NDAA for FY 2023, the provision at DFARS 252.225–7059 and the clause at DFARS 252.225–7060 apply to contracts valued at or below the simplified acquisition threshold (SAT) and to the acquisition of commercial services and commercial products, including COTS items, as defined at FAR 2.101. For an explanation of the rationale for DoD's determination, see the interim rule published in the **Federal Register** at 88 FR 37794 on June 9, 2023.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule is necessary to finalize an interim rule that amended the DFARS to implement section 855 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 855 prohibits the use of DoD funds for any fiscal year to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR). Section 855 requires offerors or awardees of a DoD contract to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract. In addition, section 855 repeals section 848 of the NDAA for FY 2022 (Pub. L. 117–81), which required a certification from offerors that they had made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a DoD contract.

The objective of the rule is to implement the prohibition and the requirement for offerors or contractors to make a good faith effort to determine that forced labor from XUAR will not be used in the performance of a DoD contract.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD reviewed data obtained from the Federal Procurement Data System for FY 2020, 2021, and 2022 for DoD purchases of supplies or end products valued above the micro-purchase threshold, including commercial products and commercially available off-the-shelf items. DoD made an average of 374,735 awards to 16,122 unique entities, of which 154,515 awards were made to 12,187 unique small entities. In addition to the small entities that received awards, DoD estimates there were approximately 621,718 unsuccessful offerors. Note that the unsuccessful offerors are not unique entities; in other words, a single entity may have been counted more than once as an unsuccessful offeror. The rule applies to successful offerors that receive awards and unsuccessful offerors.

The rule does not require any new reporting or recordkeeping.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published at 88 FR 37794 on June 9, 2023, is adopted as final without change.

[FR Doc. 2023–23433 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2023–0006]

RIN 0750–AL39

Defense Federal Acquisition Regulation Supplement: Restrictions on Overhaul and Repair of Naval Vessels in Foreign Shipyards (DFARS Case 2021–D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that restricts overhaul and repair of a naval vessel in a shipyard outside the United States or Guam.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam. The restriction does not apply to voyage repairs or to repairs required for damage sustained due to hostile actions or interventions. In addition, the restriction does not apply to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance. The rule also establishes the criteria under which foreign workers or foreign contractors may be used to perform corrective and preventive maintenance or repair or facilities maintenance on a naval vessel.

DoD published a proposed rule in the **Federal Register** at 88 FR 17360 on March 22, 2023, to revise the DFARS to implement section 1025 of the NDAA for FY 2021. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes

No changes are made to the final rule as a result of public comments.

B. Analysis of Public Comment

Comment: A respondent provided comments with overall support of the rule and stated it would save money and reduce the need for supplies and preventative maintenance on ships in foreign shipyards.

Response: DoD acknowledges the respondent's support for the rule.

C. Other Changes

Minor editorial changes are made in paragraph (b) of DFARS 225.7013–2 to comply with drafting conventions.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Products, Including Commercially Available Off-the-Shelf Items, and Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

IV. Expected Impact of the Rule

Currently, DFARS 225.7013 includes the restrictions on the construction or repair of vessels in foreign shipyards. This rule adds the exception for repairs necessary to correct damage sustained due to hostile actions or interventions and for corrective and preventive maintenance or repair and facilities maintenance on naval vessels classified as littoral combat ships operating on deployment. Under these exceptions, the repairs or maintenance described above may be performed in a shipyard outside the United States or Guam in accordance with 10 U.S.C. 8680(a). The rule also specifies the authorized use of foreign workers under certain conditions when a determination is made by the Secretary of the Navy, who cannot further delegate the authority to make such a determination.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is issuing a final rule amending the DFARS to implement section 1025 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 1025 amends 10 U.S.C. 8680(a) to restrict the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, unless the repairs are: (1) voyage repairs or repairs necessary to correct damage sustained due to hostile actions or interventions; or (2) to a naval vessel classified as a littoral combat ship operating on deployment for corrective and preventive maintenance or repair and facilities maintenance. The final rule also establishes that: (1) foreign workers may not be used to perform corrective and preventive maintenance or repair on a naval vessel unless the

Secretary of the Navy (without further delegation) makes a determination; and (2) foreign contractors may not be used to perform facilities maintenance unless approved by the Secretary of the Navy. The objective of the rule is to implement the restrictions of section 1025 of the NDAA for FY 2021 on the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, with exceptions as described in this paragraph.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD reviewed data from the Federal Procurement Data System for fiscal years 2020, 2021, and 2022 for contracts for the repair or overhaul of naval vessels outside the United States or Guam that exceeded the simplified acquisition threshold. DoD awarded a total of 383 contracts to an average of 76 unique small entities.

It is expected that this rule will continue to provide small businesses the opportunity to participate in acquisitions for the overhaul or repair of a naval vessel in a shipyard outside the United States or Guam, since naval vessel overhaul restrictions currently exist, and this rule provides exceptions that allow for U.S. contractor personnel to perform certain repairs and maintenance in accordance with 10 U.S.C. 8680(a).

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.7013 [Amended]

■ 2. Amend section 225.7013 by removing the introductory text and paragraphs (a) and (b).

■ 3. Add sections 225.7013–0, 225.7013–1, and 225.7013–2 to read as follows:

225.7013–0 Scope.

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

225.7013–1 Definitions.

As used in this section—

Corrective and preventive maintenance or repair means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

Facilities maintenance means the effort required to—

(1) Provide housekeeping services throughout the ship;

(2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(3) Clean mechanical spaces, mission zones, and topside spaces.

225.7013–2 Restrictions.

(a) *Contract award (10 U.S.C. 8679).* Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) *Overhaul, repair, or maintenance (10 U.S.C. 8680).* (1) Do not overhaul, repair, or maintain, in a shipyard outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

(2) This restriction on overhaul, repair, or maintenance does not apply to—

(i) Voyage repairs; or

(ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment—

(i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel—

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel;

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons; and

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of Navy.

[FR Doc. 2023–23432 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2023–0038]

RIN 0750–AL98

Defense Federal Acquisition Regulation Supplement: New Designated Country—North Macedonia (DFARS Case 2024–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement.

DATES: Effective October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2023, the World Trade Organization (WTO) Committee on Government Procurement approved the accession of North Macedonia to the WTO Government Procurement Agreement (GPA). This final rule amends the DFARS to add North Macedonia to the list of World Trade Organization (WTO) Government Procurement Agreement (GPA) countries wherever it appears in the DFARS, as part of the definition of ''designated country''.

The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy

American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that North Macedonia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, because North Macedonia is a party to the WTO GPA. The U.S. Trade Representative published a notice in the **Federal Register** waiving the Buy American statute and other discriminatory provisions for eligible products from North Macedonia at 88 FR 68905 on October 4, 2023. The United States, which also is a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of North Macedonia beginning on October 30, 2023, the date on which the WTO GPA will enter into force for North Macedonia.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only amends the DFARS definition of ''designated country'' to reflect that North Macedonia is now a party to the WTO GPA, without significant effect beyond the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule amends the clauses at DFARS 252.225–7017, Photovoltaic Device; 252.225–7021, Trade Agreements; and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. This final rule does not change the applicability of the clauses to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, or to acquisitions of commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This final rule affects the information collection requirements in the provisions at DFARS 252.225–7018, Photovoltaic Devices-Certificate; and 252.225–7020, Trade Agreements Certificate, currently approved under OMB Control Number 0704–0229, entitled DFARS Part 225, Foreign Acquisition, and associated clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). DFARS provisions 252.225–7018 and 252.225–7020 rely on the definition of ''designated country'' in DFARS clauses 252.225–7017 and 252.225–7021, which now includes North Macedonia. The impact of this rule, however, is negligible, because the addition of North Macedonia to the definition of ''designated country'' merely provides another possible source of the items covered by these provisions and clauses.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7017 [Amended]

■ 2. Amend section 252.225–7017—
■ a. By removing the clause date of ''(DEC 2022)'' and adding ''(OCT 2023)'' in its place; and
■ b. In paragraph (a) of the clause, in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia''.

252.225–7021 [Amended]

■ 3. Amend section 252.225–7021—
■ a. In the basic clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place;
■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia'';
■ b. In the Alternate II clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place; and
■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia''.

252.225–7045 [Amended]

■ 4. Amend section 252.225–7045—
■ a. In the basic clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place;

■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia'';
■ b. In the Alternate I clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place;
■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia'';
■ c. In the Alternate II clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place;
■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia''; and
■ d. In the Alternate III clause—
■ i. By removing the clause date of ''(JAN 2023)'' and adding ''(OCT 2023)'' in its place;
■ ii. In paragraph (a), in the definition of ''Designated country'' in paragraph (1), by adding, in alphabetical order, the country of ''North Macedonia''.

[FR Doc. 2023–23434 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231018–0249; RTID 0648–XD380]

Atlantic Surfclam and Ocean Quahog Fisheries; 2024 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs; and Suspension of Atlantic Surfclam Minimum Size Limit

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

ACTION: Final rule.

SUMMARY: NMFS announces that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2024 will remain status quo. NMFS also suspends the minimum size limit for Atlantic surfclams for the 2024 fishing year. Regulations for these fisheries require NMFS to notify the public of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone even if the previous year's quota specifications remain unchanged. The 2024 quotas were previously announced as projected values. This action confirms the final quotas are unchanged from those projections. This action would not result in harm to these fisheries.

DATES: Effective January 1, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS issue notice in the **Federal Register** of the upcoming year's quota, even if the quota remains unchanged from the previous year. At its June 2023 meeting, the Mid-Atlantic Fishery Management Council (Council) recommended no change to the quota specifications for Atlantic surfclams and ocean quahogs for the 2024 fishing year. We are announcing 2024 quota levels of 3.4 million bushels (bu) (181 million L) for Atlantic surfclams, 5.36 million bu (285 million L) for ocean quahogs, and 100,000 million bu (3.52 million L) for Maine ocean quahogs. These quotas were published as projected 2024 limits in the **Federal Register** on May 13, 2021 (86 FR 26186). This rule establishes these quotas as unchanged from 2021 and final.

The regulations at 50 CFR 648.75(b)(3) allow the Regional Administrator to annually suspend the minimum size limit for Atlantic surfclams unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclams have a shell length less than 4.75 inches (121 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors. The default minimum size limit is intended to prevent the fishery from harvesting too many small clams such that it could harm the overall population. The size limit is unnecessary if small clams are not a significant portion of overall catch. At its June 2023 meeting, the Council reviewed recent developments in the fishery and recommended the Regional Administrator once again suspend the minimum size limit for Atlantic surfclams for the 2024 fishing year. Commercial surfclam data for 2023 indicated that 19.7 percent of the overall commercial landings were composed of surfclams that were less than the 4.75-inch (121-mm) default minimum size.

Based on the information available, the Regional Administrator concurs with the Council's recommendation and is suspending the minimum size limit for Atlantic surfclams for the upcoming fishing year (January 1 through December 31, 2024).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. This rule is routine and formulaic. The public was given the opportunity to comment on the proposed rule for the 2021–2026 specifications (86 FR 9901, February 17, 2021), including the projected 2024 specifications, which remain unchanged. Delaying this action would prolong public uncertainty about the final quotas for the 2024 fishing year, and could delay issuance of 2024 Individual Transferable Quota cage tags to quota shareholders. The public and industry participants expect this action because we previously alerted the public that we would conduct this review in interim years of the multi-year specifications and announce the final quotas before or as close as possible to the January 1 start of the fishing year. This rule could not be published earlier because of the time necessary to collect data and conduct the analysis to support suspending the minimum size limit for Atlantic surfclams.

This rule is exempt from the requirements of Executive Order 12866 because it contains no implementing regulations.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

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

Dated: October 19, 2023.

Jonathan M. Kurland,

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

[FR Doc. 2023–23522 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD479]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher vessels to the Amendment 80 sector in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2023 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective October 20, 2023, through 2400 hours, Alaska local time (A.l.t.), December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2023 Pacific cod TAC specified for trawl catcher vessels in the BSAI is 25,307 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023) and reallocations (88 FR 56778, August 21, 2023, and 88 FR 67666, October 2, 2023).

The 2023 Pacific cod TAC allocated to the Amendment 80 sector in the BSAI is 16,954 mt as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), and corrections (88 FR 18258, March 28, 2023 and 88 FR 67666, October 2, 2023).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that trawl catcher vessels will not be able to harvest 700 mt of the 2023 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS reallocates 700 mt from trawl catcher vessels to the annual amount specified the Amendment 80 sector.

The harvest specifications for 2023 Pacific cod included in final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and reallocations (88 FR 18443, March 29, 2023; 88 FR 56778, August 21, 2023; 88 FR 67666, October 2, 2023) is revised as follows: 24,607 mt to trawl catcher vessels and 17,654 mt to the Amendment 80 sector.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 19, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: October 20, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–23575 Filed 10–20–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
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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

Rural Housing Service

7 CFR Part 3560

[Docket No. RHS–23–MFH–0019]

RIN 0575–AD29

Changes Related to Insurance Requirements in Multi-Family Housing (MFH) Direct Loan and Grant Programs

AGENCY: Rural Housing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), proposes to amend its regulation to implement changes related to insurance requirements under the Multi-Family Housing (MFH) Direct Loan and Grant programs. The intent of this proposed rule is to align RD insurance coverage types, amounts, and deductibles with affordable housing industry standards to simplify the coverage amounts, deductible limits, and improve the customer experience with updated and understandable insurance requirements.

DATES: Comments on the proposed rule must be received on or before December 26, 2023.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency action,'' enter the following docket number: (RHS–23–MFH–0019) or RIN# 0575–AD29. To submit or view public comments, click the ''Search'' button, then select the following document title: (Changes Related to Insurance Requirements in Multi-Family Housing (MFH) Direct Loan and Grant Programs) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' 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 through the site's ''FAQ'' link.

Other Information: Additional information about RD and its programs is available on the internet at *https://www.rurdev.usda.gov/index.html*.

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Michael Resnik, Director, Multi-Family Housing Asset Management Division, Rural Housing Service, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–0782, Telephone: (202) 430–3114 (this is not a toll-free number), or email: *Michael.Resnik@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (RHS) offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single and multifamily housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

The Title V of the Housing Act of 1949 (Act) authorized USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

RHS operates the MFH direct loan and grant programs by providing direct loans or grants to affordable multi-family rental housing for low income, elderly, disabled individuals and families, or domestic farm workers in eligible rural areas. The programs are covered by the 7 CFR part 3560, Direct Multi-Family Housing Loans and Grants and are: (1) Section 515, Rural Rental Housing loans, which finances multi-family units in rural areas; (2) Section 514 and 516 Farm Labor Housing loans and grants, which finances farm labor housing; or (3) Section 521, Rental Assistance, which finances project-based tenant rent subsidy.

As required by the Agency under the 7 CFR part 3560, borrowers are required to purchase and maintain property insurance on all buildings included as security for an Agency loan, to avoid a non-monetary loan default. Regulations require borrowers to provide fidelity coverage, liability insurance and various other insurance coverage to protect against losses or damages.

II. Purpose of This Regulatory Action

Currently, 7 CFR part 3560 consists of outdated insurance requirements. The coverage amounts and deductible limits were established in the interim rule (69 FR 69031–69176) that was published November 26, 2004. The changes proposed by this regulatory action will update insurance coverage and deductible requirements to current dollar values. The agency intends to align RD insurance coverages and deductible limits with affordable housing industry standards. The intent of this proposed rule is to improve the customer experience with updated and understandable insurance requirements.

The insurance premiums, including those for hazard/property insurance required by the Agency, are increasing due to changes in the insurance industry, such as the increasing of insurance rates in part due to increase catastrophic events. Our stakeholders will benefit from these proposed changes through lower insurance premiums and more flexibility in choices of coverage and deductibles. The current low deductible limits result in higher premiums. This proposed rule will allow higher deductible limits and will provide flexibility to the owner to select a deductible that can lower the premium costs.

When a disaster has occurred and the coverage was less than the industry standard of 80% of replacement cost value, the Agency has seen the loss of needed multifamily housing properties. Due to insufficient coverage amounts,

the property was not able to be rebuilt and the communities in need of affordable housing have lost housing units. This proposed rule intends to assist stakeholders by providing the financial capacity to build-back needed affordable housing units. Our rural communities will benefit and be able to maintain affordable housing units.

This proposed rule is expected to result in a stronger, more resilient portfolio of properties, improved oversight of critical areas and will reduce portfolio financial risk with more consistent coverage amounts and deductible limits. This proposed rule will create a more streamlined and positive customer experience with RHS MFH programs.

III. Summary of Changes

RHS proposes to amend 7 CFR 3560.4, 3560.62, and 3560.105 to implement changes related to insurance requirements for the MFH Direct Housing Loans and Grants program.

The proposed changes are highlighted as follows:

7 CFR 3560, Subpart A

(1) In § 3560.4(b), the Agency is removing the reference to 7 CFR part 1806, subpart B—National Flood Insurance. The flood insurance requirement for the covered programs is required in § 3560.105.

7 CFR 3560, Subpart B

(2) In § 3560.62(d), the Agency is updating the current format to be more reader friendly and adding changes that would require Worker's Compensation insurance and business income insurance. The Worker's Compensation insurance requirement would implement current Agency policy. The business income insurance requirement would provide protection and financial relief to borrowers who suffer income loss due to damage or destruction at their rental property.

7 CFR 3560, Subpart C

(3) The Agency proposes to update the insurance coverages and deductible requirements for the MFH Direct Loan and Farm Labor Housing programs to current dollars. The Agency's research for the proposed updates include a review of data from other federal housing agencies such as Housing and Urban Development (HUD) and Freddie Mac, coupled with state agencies and private sector affordable housing data. This data is used by the Agency as an indicator of industry standards for the insurance requirements.

Adding Worker's Compensation insurance and Business Income insurance requirements, would be consistent with housing industry standards. This change would also be consistent with the proposed change for 7 CFR 3560.62(d).

In § 3560.105, the Agency is making the following changes:

(i) Update language in paragraph (b)(1) to state that insurance is required, on or prior to loan or grant closing rather than prior to loan approval. Also, update language to clarify when insurance is required if there is interim financing or the Agency is providing multiple loan advances.

(ii) Update paragraph (b)(4) to state that the Agency must be named as loss co-payee or mortgagee, regardless of lien position, which provides consistency with Agency subordination agreement documents.

(iii) Update paragraph (c)(4) to state that insurance is required on or prior to loan or grant closing rather than prior to loan approval. This is consistent with the proposed change to § 3560.105(b)(1).

(iv) Include windstorm coverage in the general types of coverage as noted in hazard insurance in paragraph (f)(1)(i). And add a caveat to (f)(2)(i) that Windstorm Coverage is an other type of insurance the Agency may require when it is specifically excluded from the All-Risk policy. This is consistent with current hazard (or property) insurance industry standard.

(v) Update paragraph (f)(1)(iii) to include the amount of coverage requirement to provide consistency with current Agency policy.

(vi) Add paragraph (f)(1)(v) to include business income loss insurance in the list of minimum property insurance that borrowers must acquire. This change is consistent with the proposed change for 7 CFR part 3560.62(d).

(vii) Update paragraph (f)(3) from a depreciated replacement value or unpaid loan balance, to a ''not less than a percentage of insurable replacement cost value,'' which is a percentage that is consistent with affordable housing industry standards for the minimum property insurance coverage.

(viii) Remove paragraph (f)(3)(ii) because its intent is duplicative of paragraph (f)(3)(i). And paragraph (f)(3)(iii) will be redesignated to the new paragraph (f)(3)(ii) and revise the minimum flood insurance coverage to the lesser of, not less than a percentage of insurable replacement cost value, or maximum amount of insurance available under the National Flood Insurance Act, which is consistent with affordable housing industry standards.

(ix) Update the language in paragraph (f)(4) to consolidate the relevant content of this paragraph and remove the sub-bullet content that references depreciated replacement value which is no longer relevant.

(x) Update the language in paragraph (f)(7) by adding an additional option for insurance settlement claims to be placed in an other supervised account.

(xi) Update the language in paragraph(f)(9)(i)(A) and (B) and adding a paragraph (f)(9)(i)(C) to the hazard/property insurance deductible limits to a ''not to exceed'' amount that is based on the coverage amount, instead of the current deductible calculation formula. The current Agency limitations on the deductible limit contributes to rising premium costs for the project. This change will allow for larger deductible limits which in turn, will make the project's insurance premiums more affordable.

(xii) Update the language in paragraph (f)(9)(iii) regarding the deductible amount of windstorm coverage to have the same deductible limits as hazard/property insurance, which will create consistency among deductibles and in turn, makes it easier for the borrower to be in compliance with insurance requirements.

(xiii) Update the language in paragraph (f)(9)(iv) regarding the earthquake deductible limit to allow deductibles that do not exceed 20 percent of the coverage amount. This will increase the deductible limit and align the deductible with affordable housing industry standards.

(xiv) Add new paragraph (f)(11) to include policy requirements for cancellation, standard form of Non-Contribution Mortgage Clause, and loss payee.

(xv) Revise language in paragraph (h)(2)(ii) by removing the fidelity coverage deductible chart and replacing it with a new deductible limit based on a ''not to exceed amount.'' Also, revising the fidelity coverage amount to a specific percentage of proposed annual rental income with a minimum limit, instead of the Agency's current policy of a formula based calculation. This change will simplify the coverage calcuation, align the coverage amount and deductible limit with affordable housing industry standard, create consistency among insurance deductibles, and in turn make it easier for the borrower to be in compliance with insurance requirements.

(xvi) Update to the definition of worker's compensation insurance based on industry standards will be added and becomes paragraph (i). The current paragraph (i) (Taxes) will become paragraph (j).

IV. Regulatory Information

Statutory Authority

Title V the Housing Act of 1949 (42 U.S.C. 1480 et. seq.), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title, as implemented under 7 CFR part 3560.

Executive Order 12372, Intergovernmental Review of Federal Programs

These loans and grants are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan and grants in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this proposed rule: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rulemaking will be preempted; (2) no retroactive effect will be given to this rulemaking except as specifically prescribed in the rulemaking; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this rulemaking.

Executive Order 13132, Federalism

The policies contained in this proposed 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. This proposed rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed 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 proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rulemaking, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regards to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

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 proposed rule 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 rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to government information, services, and other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the proposed rule and available data, it has been determined that implementation of the rulemaking will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

Assistance Listing

The programs affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under numbers 10.405 and, 10.415.

Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions

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

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

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, *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: from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

(3) *Email: Program.Intake@usda.gov.*

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List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs-housing and community development, Insurance, Loan programs-agriculture, Loan programs-housing and community development, Low- and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RHS proposes to amend 7 CFR part 3560 as follows:

PART 3560—DIRECT MULT-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues read as follows:

Authority: 42 U.S.C. 1480.

■ 2. Amend § 3560.4 by revising paragraph (b) to read as follows:

§ 3560.4 Compliance with other Federal requirements.

* * * * *

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; and the National Flood Insurance Reform Act of 1994.

* * * * *

■ 3. Amend § 3560.62 by revising paragraph (d) to read as follows:

§ 3560.62 Technical, legal, insurance, and other services.

* * * * *

(d) *Insurance.* Applicants must meet the property, liability, flood, Worker's Compensation, business income loss, and fidelity insurance requirements in § 3560.105.

(1) Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed.

(2) Fidelity coverage must be in force as soon as there are assets within the organization, and it must be obtained before any loan funds or interim financing funds are made available to the borrower.

(3) If the property has permanent and/or part-time employees assigned directly to the project, Worker's Compensation, also known as employer's liability coverage, must be obtained before interim financing funds are made available to the borrower, or prior to loan or grant closing, whichever occurs first.

(4) Upon completion of construction or rehabilitation of the project, or any portion thereof that allows for occupancy, the Owner shall obtain business income loss insurance.

* * * * *

■ 4. Amend § 3560.105 by:

■ a. Revising paragraphs (b)(1) and (4), (c)(4), and (f)(1)(i) and (iii);

■ b. Adding paragraph (f)(1)(v);

■ c. Revising paragraphs (f)(2)(i), (f)(3) introductory text, and (f)(3)(ii);

■ d. Removing paragraph (f)(3)(iii);

■ e. Revising paragraphs (f)(4), (f)(7) introductory text, and (f)(9)(i), (iii), and (iv);

■ f. Adding paragraph (f)(11);

■ g. Revising paragraph (h)(2)(ii);

■ h. Redesignating paragraph (i) as paragraph (j); and

■ i. Adding a new paragraph (j).

The revisions and additions read as follows:

§ 3560.105 Insurance and taxes.

* * * * *

(b) * * *

(1) On or prior to the date of loan or grant closing, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire. If interim financing is obtained or the Agency provides for multiple advances for construction or rehabilitation, evidence of builder's risk insurance is required prior to the start of construction or rehabilitation.

* * * * *

(4) The Agency must be named as loss co-payee or mortgagee as it appears on all property insurance policies.

* * * * *

(c) * * *

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(9) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency for approval prior to the date of loan or grant closing.

* * * * *

(f) * * *

(1) * * *

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, windstorms, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as ''Property Insurance,'' ''Fire and Extended Coverage,'' ''Homeowners,'' ''All Physical Loss,'' or ''Broad Form'' policies.

* * * * *

(iii) *Builder's risk insurance.* A policy that insures 100 percent of the estimated

cost value of the project under construction or rehabilitation, or applicable State required coverage limits, if more stringent.

* * * * *

(v) *Business income loss.* Business income or rent loss coverage provides coverage for the loss of rental income incurred due to a property loss during a 12-month period.

(2) * * *

(i) Windstorm Coverage if specifically excluded from the All-Risk policy.

* * * * *

(3) For property insurance, the minimum coverage amount must equal the ''Total Estimated Reproduction Cost of New Improvements,'' as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must not be less than 80 percent of the insurable replacement cost value, unless such coverage is financially unfeasible for the housing project.

* * * * *

(ii) When required by paragraph (f)(1) of this section, the coverage amount for flood insurance must not be less than 80 percent of the insurable replacement value, or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is less. The policy shall show the Owner as insured and shall show loss, if any, payable to the United States of America acting through the RHS Service or its successor agency.

(4) Except for flood insurance, property insurance is not required if the housing project is in a condition which the Agency determines makes insurance coverage not economical.

* * * * *

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account or other supervised account for the housing project.

* * * * *

(9) * * *

(i) *Hazard/property insurance.* * * *

(A) For a project with less than or equal to $1,000,000 of coverage, no deductible greater than $10,000 per occurrence.

(B) For a project with more than $1,000,000 but less than or equal to $2,000,000 of coverage, no deductible greater than $25,000 per occurrence.

(C) For a project with more than $2,000,000 of coverage, no deductible greater than $50,000 per occurrence.

* * * * *

(iii) *Windstorm coverage.* When windstorm coverage is excluded from the ''All Risk'' policy, the deductible is as identified in (f)(9)(i) of this section.

(iv) *Earthquake coverage.* If the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 20 percent of the coverage amount.

* * * * *

(11) Each policy shall meet the following requirements:

(i) Policy may not be cancelled or modified without at least thirty (30) days prior written notice to the Agency (the clause shall not state that the insurer will ''endeavor'' to send such notice or that no liability attaches to the insurer for failure to send such notice.)

(ii) Policy shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or part of such insurance payment.

(iii) Such insurance policies shall name the Owner as the Insured and shall carry a standard form of Non-Contribution Mortgage Clause showing loss or damage, if any, payable to the Owner and the ''United States of America acting through the Rural Housing Service or its successor agency,'' as its interest may appear.

* * * * *

(h) * * *

(2) * * *

(ii) Fidelity coverage amount and deductible as follows:

(A) Coverage amount. An amount at least equal to 25 percent of the operational cash sources per the project's proposed annual budget or $50,000 whichever is greater, unless greater amounts are required by the Owner. Where the operational cash sources for a project are substantially below the minimum $50,000 bonding requirement for operation, with Agency approval, the bond may be reduced to an amount sufficient to cover at least 25 percent of the operational cash sources.

(B) Deductible. No greater than $15,000 per occurrence.

* * * * *

(i) *Workers' compensation insurance.* This insurance coverage, which may also be known as employer's liability coverage, provides benefits to employees who suffer work-related injuries or illnesses. Workers' compensation insurance is required for permanent and part-time staff assigned directly to the project.

(j) *Taxes.* The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent.

* * * * *

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

[FR Doc. 2023–23344 Filed 10–24–23; 8:45 am]

BILLING CODE 3410–XV–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

[NCUA–2023–0082]

RIN 3133–AF53

Simplification of Share Insurance Rules

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is seeking comment on proposed amendments to its regulations governing share insurance coverage. The proposed rule would address the following items: simplify the share insurance regulations by establishing a ''trust accounts'' category that would provide for coverage of funds of both revocable trusts and irrevocable trusts deposited at federally insured credit unions (FICUs); provide consistent share insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender; and provide more flexibility for the NCUA to consider various records in determining share insurance coverage in liquidations.

DATES: Comments must be received on or before December 26, 2023.

ADDRESSES: You may submit written comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed rule is NCUA–2023–0082. Follow the instructions for submitting comments.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the Federal eRulemaking Portal at *https://*

www.regulations.gov as submitted, except when impossible for technical reasons. Public comments will not be edited to remove any identifying or contact information. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Zells, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540 or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

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I. General Background and Legal Authority

A. General Background

The NCUA is an independent Federal agency that insures funds maintained in accounts of members or those otherwise eligible to maintain insured accounts (member accounts) at FICUs, protects the members who own credit unions, and charters and regulates Federal credit unions (FCUs). The NCUA protects the safety and soundness of the credit union system by identifying, monitoring, and reducing risks to the National Credit Union Share Insurance Fund (Share Insurance Fund). Backed by the full faith and credit of the United States, the Share Insurance Fund provides Federal share insurance to millions of account holders in all FCUs and the majority of state-chartered credit unions.

Under the Federal Credit Union Act (FCU Act), the NCUA is responsible for paying share insurance to any member, or to any person with funds lawfully held in a member account, in the event of a FICU's failure up to the standard maximum share insurance amount (SMSIA), which is currently set at $250,000.[1] The FCU Act states the determination of the net amount of share insurance paid ''shall be in accordance with such regulations as the Board may prescribe'' and requires that, ''in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.'' [2] However, the FCU Act also specifically authorizes the Board to ''define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.'' [3]

The NCUA has implemented these requirements by issuing regulations recognizing particular categories of accounts, such as single ownership accounts, joint ownership accounts, revocable trust accounts, and irrevocable trust accounts.[4] If an account meets the requirements for a particular category, the account is insured up to the $250,000 limit separately from shares held by the member in a different account category at the same FICU. For example, provided all requirements are met, shares in the single ownership category will be separately insured from shares in the joint ownership category held by the same member at the same FICU.

The NCUA's share insurance categories have been defined through both statute and regulation. Certain categories, such as the accounts held by government depositors [5] and certain retirement accounts, including individual retirement accounts, have been expressly defined by Congress.[6] Other categories, such as joint accounts [7] and corporate accounts,[8] have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 745 pursuant to the NCUA's rulemaking authority. In addition to defining the insurance categories, the share insurance regulations in part 745 provide the criteria used to determine insurance coverage for shares in each category.

It is also worth noting that the FCU Act provides a definition of the term ''member account.'' The NCUA insures ''member accounts'' at all FICUs.[9] Importantly, the term ''member account'' is not limited to those persons enumerated in the credit union's field of membership who have become members. It also permits certain nonmembers, such as other nonmember credit unions, nonmember public units and political subdivisions, and, in the case of low-income designated credit unions, deposits of nonmembers generally. In other words, the NCUA provides share insurance coverage to members and those otherwise eligible to maintain insured accounts at FICUs.

As discussed in more detail below, the proposed amendments reflect the Board's aim to: (1) provide FICUs, FICU employees, and those with member accounts at FICUs, with a rule that is easier to understand; (2) provide parity with changes adopted by the FDIC in January 2022; and (3) facilitate the prompt payment of share insurance in accordance with the FCU Act, among other objectives.

B. Legal Authority

The Board has issued this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for FICUs.[10] The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[11] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[12] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[13] Accordingly, the FCU Act grants the Board broad rulemaking

[1] 12 U.S.C. 1787(k)(1)(A), (k)(6).
[2] 12 U.S.C. 1787(k)(1)(B).
[3] 12 U.S.C. 1787(k)(1)(C).
[4] 12 CFR part 745.
[5] *See* 12 U.S.C. 1787(k)(2).
[6] *See* 12 U.S.C. 1787(k)(3).
[7] 12 CFR 745.8.
[8] 12 CFR 745.6.
[9] 12 U.S.C. 1752(5).
[10] 12 U.S.C. 1751 *et seq.*
[11] 12 U.S.C. 1766(a).
[12] 12 U.S.C. 1787.
[13] 12 U.S.C. 1789(a)(11).

authority to ensure that the credit union industry and the Share Insurance Fund remain safe and sound.

II. Simplification of Share Insurance Trust Rules

A. Policy Objectives

The Board is seeking comment on proposed amendments to its regulations governing share insurance coverage for funds held in member accounts at FICUs in connection with trusts.[14] The proposed amendments are intended to: (1) provide FICUs, FICU employees, and those with member accounts at FICUs with a rule for trust account coverage that is easier to understand; (2) provide parity with changes adopted by the FDIC in January 2022; [15] and (3) facilitate the prompt payment of share insurance in accordance with the FCU Act, among other objectives. Accomplishing these objectives also would further the NCUA's mission in other respects, as discussed in greater detail below.

Clarifying Insurance Coverage for Trust Accounts

The share insurance trust rules have evolved over time and can be difficult to apply in some circumstances. The proposed amendments would clarify for FICUs, their employees, their accountholders, and other interested parties the insurance rules and limits for trust accounts. The proposal both reduces the number of rules governing coverage for trust accounts and establishes a straightforward calculation to determine coverage. The proposed amendments are intended to alleviate some of the confusion that FICUs, their employees, and their accountholders may experience with respect to insurance coverage and limits.

Under the current regulations, there are distinct and separate sets of rules applicable to shares of revocable trusts as opposed to irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the NCUA's efforts to simplify the revocable trust rules in 2008, the consistently high volume of complex inquiries about trust accounts over an extended period suggests continued confusion about insurance limits.[16] NCUA share insurance specialists have answered over 13,000 calls with questions since the fourth quarter of 2019 alone.[17] It is estimated that over 50 percent of these inquiries, which do not include those received through email or submitted through mycreditunion.gov, pertain to share insurance coverage for trust accounts (revocable or irrevocable). To help clarify insurance limits, the proposed amendments would further simplify insurance coverage of trust accounts (revocable and irrevocable) by harmonizing the coverage criteria for revocable and irrevocable trust accounts and by establishing a simplified formula for calculating coverage that would apply to these funds deposited at FICUs. The NCUA proposes using the calculation the NCUA first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. This formula is straightforward and is already generally familiar to FICUs and their members.[18] The current formulas for revocable trust accounts with more than five beneficiaries and irrevocable trust accounts would be eliminated.

Parity

Adoption of the proposed changes would also align with changes the FDIC adopted in January 2022, which are set to take effect on April 1, 2024.[19] As it stressed in its 2021 final rule addressing the share insurance coverage of joint ownership accounts, the Board believes it is important to maintain parity between the nation's two Federal deposit/share insurance programs, which are backed by the full faith and credit of the United States.[20] The Board believes it is important that members of the public who use trust accounts receive the same protection whether the accounts are maintained at FICUs or other federally insured institutions.

Prompt Payment of Share Insurance

The FCU Act requires the NCUA to pay accountholders ''as soon as possible'' after a FICU liquidation.[21] However, the insurance determination and subsequent payment for many trust accounts can be delayed when NCUA staff must review complex trust agreements and apply various rules for determining share insurance coverage. The proposed amendments are intended to facilitate more timely share insurance determinations for trust accounts by reducing the time needed to review trust agreements and determine coverage. These amendments should promote the NCUA's ability to pay insurance proceeds to accountholders more quickly following the liquidation of a FICU, enabling accountholders to meet their financial needs and obligations.

Facilitating Liquidations

The proposed changes will also facilitate the liquidation of failed FICUs. The NCUA is routinely required to make share insurance determinations in connection with FICU liquidations. In many of these instances, however, share insurance coverage for certain trust accounts is based upon information that is not maintained in the FICU's account records. As a result, NCUA staff work with accountholders to obtain trust documentation following a FICU's liquidation to complete share insurance determinations. The difficulties associated with completing such a determination are exacerbated by the substantial growth in the use of formal trusts in recent decades. The proposed amendments could reduce the time spent reviewing such information, thereby reducing potential delays in the completion of share insurance determinations and payments.

B. Background and Need for Rulemaking

1. Evolution of Insurance Coverage of Funds Held in Trust Accounts

The NCUA first adopted regulations governing share insurance coverage in 1971.[22] Over the years, share insurance coverage has evolved to reflect both the NCUA's experience and changes in the credit union industry. While the regulations addressing irrevocable trusts have undergone minimal change, the regulations addressing revocable trusts have seen numerous changes, largely aimed at providing increased flexibility and simplifying coverage. Of note, in 2004 the NCUA amended the revocable trust rules, pointing to continued confusion about the coverage for revocable trust deposits and the need for parity with then recent FDIC amendments.[23] Specifically, the NCUA eliminated the defeating contingency provisions of the rules, with the result that coverage would be based on the interests of qualifying beneficiaries, irrespective of any defeating

[14] Trusts include informal revocable trusts (commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten trusts), formal revocable trusts, and irrevocable trusts.

[15] 87 FR 4455 (Jan. 28, 2022).

[16] 73 FR 60616 (Oct. 14, 2008).

[17] The NCUA's Office of Credit Union Resources and Expansion, which fields most share insurance inquiries, only began tracking calls received on October 31, 2019. The high volume of trust-related inquires predates this tracking.

[18] In 2008, the NCUA adopted an insurance calculation for revocable trusts that have five or fewer beneficiaries. Under this rule, 12 CFR 745.4(a), each trust grantor is insured up to $250,000 per beneficiary.

[19] 87 FR 4455 (Jan. 28, 2022).

[20] 86 FR 11098 (Feb. 24, 2021).

[21] 12 U.S.C. 1787(d)(1).

[22] 36 FR 2477 (Feb. 5, 1971).

[23] 69 FR 8798 (Feb. 26, 2004).

contingencies in the trust agreement.[24] This more closely aligned coverage for formal revocable trust accounts with payable-on-death accounts. Importantly, and of relevance to this proposal, defeating contingency provisions were not eliminated for irrevocable trusts and remain relevant for calculating share insurance coverage under the irrevocable trust provisions.[25] At the same time, the NCUA also eliminated the requirement to name the beneficiaries of a formal revocable trust in the FICU's account records.[26] The NCUA recognized that a grantor may elect to change the beneficiaries or their interests at any time before his or her death and that requiring a FICU to maintain a current record of this information is impractical and unnecessarily burdensome.

More recently, the NCUA's experience and adoption of similar revisions by the FDIC suggested that further changes to the trust rules were necessary. Specifically, in 2008, the NCUA simplified the rules in several respects.[27] First, it eliminated the kinship requirement for revocable trust beneficiaries, instead allowing any natural person, charitable organization, or non-profit to qualify for per-beneficiary coverage. Second, a simplified calculation was established if a revocable trust named five or fewer beneficiaries; coverage would be determined without regard to the allocation of interests among the beneficiaries. This eliminated the need to discern and consider beneficial interests in many cases.

A different insurance calculation applied to revocable trusts with more than five beneficiaries. At that time, the SMSIA was $100,000, and thus, if more than five beneficiaries were named in a revocable trust, coverage would be the greater of (1) $500,000; or (2) the aggregate amount of all beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary. When the SMSIA was increased to $250,000, a similar adjustment was made from $100,000 to $250,000 for the calculation of per beneficiary coverage.

2. Current Rules for Coverage of Funds Held in Trust Accounts

The NCUA recognizes two different insurance categories for funds held in connection with trusts at FICUs: (1) revocable trusts and (2) irrevocable trusts. The current rules for determining insurance coverage for shares in each of these categories are described below. Additionally, share insurance coverage is always limited to FICU members and those otherwise eligible to maintain insured accounts at the FICU. The NCUA's longstanding position has been that, for revocable trust accounts, all grantors (sometimes described as settlors) of the trust must be members of the FICU or otherwise eligible to maintain an insured account.[28] For irrevocable trust accounts, the NCUA has maintained the position that either all grantors/settlors or all beneficiaries of the trust must be members of the FICU or otherwise eligible to maintain an insured account.[29] As described in greater detail in section II.E., the NCUA appreciates commenter feedback as to whether these positions should be revisited.

Revocable Trust Accounts

The revocable trust category applies to funds for which the member has evidenced an intention that the funds shall belong to one or more beneficiaries upon his/her/their death. This category includes funds held in connection with formal revocable trusts—that is, revocable trusts established through a written trust agreement. It also includes funds that are not subject to a formal trust agreement, where the FICU makes payment to the beneficiaries identified in the FICU's records upon the member's death, based on account titling and applicable state law. The NCUA refers to these types of accounts, including Totten trust accounts, payable-on-death accounts, and similar accounts, as ''informal revocable trusts.'' Funds associated with formal and informal revocable trusts are aggregated for the purposes of the share insurance rules; thus, funds that will pass from the same grantor to beneficiaries are aggregated and insured up to the SMSIA, currently $250,000, per beneficiary, regardless of whether the transfer would be accomplished through a written revocable trust or an informal revocable trust.[30]

Under the current revocable trust rules, beneficiaries with insurable interests are limited to natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986.[31] If a named beneficiary does not satisfy this requirement, funds held in trust for that beneficiary are treated as single ownership funds of the grantor and aggregated with any other single ownership accounts the grantor maintains at the same FICU.[32]

Certain requirements also must be satisfied for an account to be insured in the revocable trust category. The required intention that the funds shall belong to the beneficiaries upon the grantor's death must be manifested in the ''title'' of the account or elsewhere in the account records of the credit union using commonly accepted terms such as ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym for these terms.[33] For the purposes of this requirement, a FICU's electronic account records are included. For example, a FICU's electronic account records could identify the account as a revocable trust account through coding or a similar mechanism. In addition, the beneficiaries of informal trusts (*i.e.,* payable-on-death accounts) must be named in the FICU's account records.[34] The requirement to name beneficiaries in the FICU's account records does not apply to formal revocable trusts; the NCUA generally obtains information on beneficiaries of such trusts from accountholders following a FICU's liquidation. Therefore, if a member's account funds exceed $250,000 at a liquidated FICU, this will result in a hold being placed on the member's funds in excess of the SMSIA until the NCUA can review the ownership documents and trust agreement to verify the beneficiary rules are satisfied, thereby delaying insurance determinations and full insurance payments to some insured accountholders.

The calculation of share insurance coverage for revocable trust accounts depends upon the number of unique beneficiaries named by a member accountholder.[35] If five or fewer

[24] Prior to the changes adopted in 2004, if the interest of a qualifying beneficiary in an account established under the terms of a living trust agreement was contingent upon fulfillment of a specified condition, referred to as a defeating contingency, separate insurance was not available for that beneficial interest. Instead, the beneficial interest would be added to any individual account(s) of the grantor and insured up to the SMSIA, then $100,000. An example of a defeating contingency is where an account owner names his son as a beneficiary but specifies in the living trust document that his son's ability to receive any share of the trust funds is dependent upon him successfully completing college.

[25] 12 CFR 745.2(d).

[26] 69 FR 8798, 8799 (Feb. 26, 2004).

[27] 73 FR 60616 (Oct. 14, 2008).

[28] *See* 12 CFR part 701, app. A. Art. III, sec. 6 (''Shares issued in a revocable trust—the settlor must be a member of this credit union in his or her own right.'').

[29] *See* 12 CFR part 701, app. A. Art. III, sec. 6 (''Shares issued in an irrevocable trust—either the settlor or the beneficiary must be a member of this credit union.'').

[30] 12 CFR 745.4(a).

[31] 12 CFR 745.4(c).

[32] 12 CFR 745.4(d).

[33] 12 CFR 745.4(b).

[34] *Id.*

[35] For a FICU to open a revocable trust account, all grantors/settlors of the trust must be members of the FICU or otherwise eligible to maintain an insured account. *See* 12 CFR part 701, app. A. Art.

beneficiaries have been named, the member accountholder is insured in an amount up to the total number of named beneficiaries multiplied by the SMSIA, and the specific allocation of interests among the beneficiaries is not considered.[36] If more than five beneficiaries have been named, the member accountholder is insured up to the greater of: (1) five times the SMSIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMSIA.[37] For the purposes of this calculation, a life estate interest is valued at the SMSIA.[38]

Where a revocable trust account is jointly owned, the interests of each account owner are separately insured up to the SMSIA per beneficiary.[39] However, if the co-owners are the only beneficiaries of the trust, the account is instead insured under the NCUA's joint account rule.[40]

The current revocable trust rule also contains a provision that was intended to reduce confusion and the potential for a decrease in share insurance coverage in the case of the death of a grantor. Specifically, if a revocable trust becomes irrevocable due to the death of the grantor, the trust account may continue to be insured under the revocable trust rules.[41] Absent this provision, the irrevocable trust rules would apply following the grantor's death, as the revocable trust becomes irrevocable at that time, which could result in a reduction in coverage.[42]

Irrevocable Trust Accounts

Accounts maintaining funds held by an irrevocable trust that has been established either by written agreement or by statute are insured in the irrevocable trust share insurance category. Calculating coverage in this category requires a determination of whether beneficiaries' interests in the trust are contingent or non-contingent.[43] Non-contingent interests are interests that may be determined without evaluation of any contingencies, except for those covered by the present worth and life expectancy tables and the rules for their use set forth in the Internal Revenue Service (IRS) Federal Estate Tax Regulations.[44] Funds held for non-contingent trust interests are insured up to the SMSIA for each such beneficiary.[45] Funds held for contingent trust interests are aggregated and insured up to the SMSIA in total.[46]

The irrevocable trust rules do not apply to funds held for a grantor's retained interest in an irrevocable trust.[47] Such funds are aggregated with the grantor's other single ownership funds for the purposes of applying the share insurance limit.

3. Need for Further Rulemaking

As noted, the rules governing share insurance coverage for trust accounts have been simplified on several occasions. However, these rules are still frequently misunderstood and can present some implementation challenges. The trust rules can require overly detailed, time-consuming, and resource-intensive reviews of trust documentation to obtain the information necessary to calculate share insurance coverage. This information is often not found in a FICU's records and must be obtained from members after a FICU's liquidation. Revision of the share insurance coverage rules for trust accounts along the lines proposed would reduce the amount of information that must be provided for trust accounts, as well as the complexity of the NCUA's review. This revision should enable the NCUA to complete share insurance determinations more rapidly if a FICU with a large number of trust accounts is liquidated. Delays in the payment of share insurance can be consequential for accountholders and the proposal would help to mitigate those delays.

Several factors contribute to the challenges of making insurance determinations for trust accounts. First, there are two different sets of rules governing share insurance coverage for trust accounts. Understanding the coverage for a particular account requires a threshold inquiry to determine which set of rules to apply—the revocable trust rules or the irrevocable trust rules. This requires review of the trust agreement to determine the type of trust (revocable or irrevocable), and the inquiry may be complicated by innovations in state trust law that are intended to increase the flexibility and utility of trusts. In some cases, this threshold inquiry is also complicated by the provision of the revocable trust rules that allows for continued coverage under the revocable trust rules where a trust becomes irrevocable upon the grantor's death. The result of an irrevocable trust deposit being insured under the revocable trust rules has proven confusing for both accountholders and FICUs.

Second, even after determining which set of rules applies to a particular account, it may be challenging to apply the rules. For example, the revocable trust rules include unique titling requirements and beneficiary requirements. These rules also provide for two separate calculations to determine insurance coverage, depending in part upon whether there are five or fewer trust beneficiaries or at least six beneficiaries. In addition, for revocable trusts that provide benefits to multiple generations of potential beneficiaries, the NCUA needs to evaluate the trust agreement to determine whether a beneficiary is a primary beneficiary (immediately entitled to funds when a grantor dies), contingent beneficiary, or remainder beneficiary. Only eligible primary beneficiaries and remainder beneficiaries are considered in calculating NCUA share insurance coverage. The irrevocable trust rules may require detailed review of trust agreements to determine whether beneficiaries' interests are contingent and may also require actuarial or present value calculations. These types of requirements complicate the determination of insurance coverage for trust deposits, have proven confusing for accountholders, and extend the time needed to complete a share insurance determination and insurance payment.

Third, the complexity and variety of account holders' trust arrangements adds to the difficulty of determining share insurance coverage. For example, trust interests are sometimes defined through numerous conditions and formulas, and a careful analysis of these provisions may be necessary to calculate share insurance coverage under the current rules. Arrangements involving multiple trusts where the same beneficiaries are named by the same grantor(s) in different trusts add to the

III, sec. 6 (''Shares issued in a revocable trust—the settlor must be a member of this credit union in his or her own right.'').

[36] 12 CFR 745.4(a).

[37] 12 CFR 745.4(e).

[38] 12 CFR 745.4(g). For example, if a revocable trust provides a life estate for the member accountholder's spouse and remainder interests for six other beneficiaries, the spouse's life estate interest would be valued at the lesser of $250,000 or the amount held in the trust for the purposes of the share insurance calculation.

[39] 12 CFR 745.4(f)(1).

[40] 12 CFR 745.4(f)(2).

[41] 12 CFR 745.4(h).

[42] The revocable trust rules tend to provide greater coverage than the irrevocable trust rules because contingencies are not considered for revocable trusts. In addition, where five or fewer beneficiaries are named by a revocable trust, specific allocations to beneficiaries also are not considered.

[43] 12 CFR 745.2(d) and 745.9–1.

[44] 12 CFR 745.2(d)(1). For example, a life estate interest is generally non-contingent, as it may be valued using the life expectancy tables. However, where a trustee has discretion to divert funds from one beneficiary to another to provide for the second beneficiary's medical needs, the first beneficiary's interest is contingent upon the trustee's discretion.

[45] 12 CFR 745.9–1(b).

[46] 12 CFR 745.2(d)(2).

[47] *See* 12 CFR 745.2(d)(4) (The term ''trust interest'' does not include any interest retained by the settlor.).

difficulty of applying the trust rules. The NCUA believes simplification of the share insurance rules presents an opportunity to more closely align the coverage provided for different types of trust funds. For example, the revocable trust rules generally provide for a greater amount of coverage than the irrevocable trust rules. This outcome occurs because contingent interests for irrevocable trusts are aggregated and insured up to the SMSIA rather than up to the SMSIA per beneficiary, while contingencies are not considered and therefore do not limit coverage in the same manner for revocable trusts.

Finally, as previously noted, adoption of the proposed changes would align with changes the FDIC adopted in January 2022, which are set to take effect on April 1, 2024. The Board believes it is important to maintain parity between the nation's two Federal deposit/share insurance programs. It is imperative that members of the public who use trust accounts for the transfer of ownership of assets better understand the rules governing such accounts and receive the same protection, whether the accounts are maintained at FICUs or other federally insured institutions.

C. Description of Proposed Rule

The NCUA is proposing to amend the rules governing share insurance coverage for funds held in trust accounts at FICUs. Generally, the proposed amendments would: (1) merge the revocable and irrevocable trust categories into one category; (2) apply a simpler, common calculation method to determine insurance coverage for funds held by revocable and irrevocable trusts; and (3) eliminate certain requirements found in the current rules for revocable and irrevocable trusts.

Merger of Revocable and Irrevocable Trust Categories

As discussed above, the NCUA historically has insured revocable trust funds and irrevocable trust funds held at FICUs under two separate insurance categories. The NCUA's experience has been that this bifurcation often confuses FICUs and their members, as it requires a threshold inquiry to determine which set of rules to apply to a trust account. Moreover, all trust funds deposited at a FICU must be categorized before the aggregation of trust funds deposited within each category can be completed. The NCUA believes funds held in connection with revocable and irrevocable trusts are sufficiently similar, for the purposes of share insurance coverage, to warrant the merger of these two categories into one category. Under the NCUA's current rules, share insurance coverage is provided because the trustee maintains the funds for the benefit of the beneficiaries. This is true regardless of whether the trust is revocable or irrevocable. Merger of the revocable and irrevocable trust categories would better conform share insurance coverage to the substance—rather than the legal form—of the trust arrangement. This underlying principle of the share insurance rules is particularly important in the context of trusts, as state law often provides flexibility to structure arrangements in different ways to accomplish a given purpose.[48]

FICU members may have a variety of reasons for selecting a particular legal arrangement, but that decision should not significantly affect share insurance coverage. Importantly, the proposed merger of the revocable trust and irrevocable trust categories into one category for share insurance purposes would not affect the application or operation of state trust law; this would only affect the determination of share insurance coverage for these types of trust funds in the event of a FICU's liquidation.

Accordingly, the NCUA is proposing to amend § 745.4 of its regulations, which currently applies only to revocable trust accounts, to establish a new ''trust accounts'' category that would include both revocable and irrevocable trust funds deposited at a FICU. The proposed rule defines the funds that would be included in this category as follows: (1) informal revocable trust funds, such as payable-on-death accounts, in-trust-for accounts, and Totten trust accounts; (2) formal revocable trust funds, defined to mean funds held pursuant to a written revocable trust agreement under which funds pass to one or more beneficiaries upon the grantor's death; and (3) irrevocable trust funds, meaning funds held pursuant to an irrevocable trust established by written agreement or by statute.

In addition, the merger of the revocable trust and irrevocable trust categories eliminates the need for §§ 745.4(h) through (i) of the current revocable trust rules, which provide that the revocable trust rules may continue to apply to an account where a formal revocable trust becomes irrevocable due to the death of one or more of the trust's grantors. These provisions were intended to benefit accountholders, who sometimes were unaware that a trust owner's death could trigger a significant decrease in insurance coverage as a revocable trust becomes irrevocable.

However, in the NCUA's experience, this rule has proven complex in part because it results in some irrevocable trusts being insured per the revocable trust rules, while other irrevocable trusts are insured under the irrevocable trust rules.[49] As a result, an accountholder could know a trust was irrevocable but not know which share insurance rules to apply. The proposed rule would insure funds of formal and informal revocable trusts and irrevocable trusts according to a common set of rules, eliminating the need for these provisions (§§ 745.4(h) through (i)) and simplifying coverage for accountholders. Accordingly, the death of a formal revocable trust owner would not result in a decrease in share insurance coverage for the trust. Coverage for irrevocable and formal revocable trusts would fall under the same category and share insurance coverage would remain the same, even after the expiration of the six-month grace period following the death of an account owner.[50]

Informal revocable trust accounts would also be insured under this same trust account category but are highly unlikely to result in the creation of an irrevocable trust account upon an owner or co-owner's death. As is the case under the existing share insurance regulations, when a co-owner of an informal revocable trust account dies, share insurance coverage for the deceased owner's interest in the account will cease after the expiration of the 6-month grace period allowed for the death of share account owners. After the expiration of the 6-month grace period, share insurance coverage will be calculated as if the deceased co-owner did not exist and the deceased co-owner's name did not remain on the account. This treatment of the account will be based upon the fact that all funds in the account will be owned by

[48] For example, the NCUA currently aggregates funds in payable-on-death accounts and funds of written revocable trusts for the purposes of share insurance coverage, despite their separate and distinct legal mechanisms. Also, where the co-owners of a revocable trust are also that trust's sole beneficiaries, the NCUA instead insures the trust's funds as joint funds, reflecting the arrangement's substance rather than its legal form.

[49] As noted above, if a revocable trust becomes irrevocable due to the death of the grantor, the account continues to be insured under the revocable trust rules. 12 CFR 745.4(h).

[50] The death of an account owner can affect share insurance coverage, often reducing the amount of coverage that applies to a family's accounts. To ensure that families dealing with the death of a family member have adequate time to review and restructure accounts if necessary, the NCUA insures a deceased owner's accounts as if he/she/they were still alive for a period of 6 months after his/her/their death. 12 CFR 745.2(e).

one person (*i.e.,* the surviving co-owner).

Calculation of Coverage

The NCUA is proposing to use one streamlined calculation to determine the amount of share insurance coverage for funds of both revocable and irrevocable trusts. This method is already used by the NCUA to calculate coverage for revocable trusts that have five or fewer beneficiaries, and it is an aspect of the rules that is generally well-understood by FICUs and their members. The proposed rule would provide that a grantor's trust funds are insured in an amount up to the SMSIA (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five beneficiaries. The NCUA would presume that, for share insurance purposes, the trust provides for equal treatment of beneficiaries such that specific allocation of the funds to the respective beneficiaries will not be relevant, consistent with the NCUA's current treatment of revocable trusts with five or fewer beneficiaries. This would, in effect, limit coverage for a grantor's trust funds at each FICU to a total of $1,250,000; in other words, maximum coverage would be equivalent to $250,000 per beneficiary for up to five beneficiaries. In determining share insurance coverage, the NCUA would continue to consider only beneficiaries who are expected to receive the funds held by the trust in a member account at the FICU; the NCUA would not consider beneficiaries who are expected to receive only non-deposit assets of the trust.

The NCUA is proposing to calculate coverage in this manner, in part, based on its experience with the revocable trust rules after the modifications to these rules in 2008.[51] The NCUA has found that the share insurance calculation method for revocable trusts with five or fewer beneficiaries has been the most straightforward and is easy for FICUs and the public to understand. This calculation provides for insurance in an amount up to the total number of unique grantor-beneficiary trust relationships (*i.e.,* the number of grantors, multiplied by the total number of beneficiaries, multiplied by the SMSIA).[52] In addition to being simpler, this calculation has proven beneficial in liquidations, as it leads to more prompt share insurance determinations and quicker access to insured funds for accountholders. Accordingly, the NCUA proposes to calculate share insurance coverage for trust accounts based on the simpler calculation currently used for revocable trusts with five or fewer beneficiaries.

The streamlined calculation that would be used to determine coverage for revocable trust funds and irrevocable trust funds includes a limit on the total amount of share insurance coverage for all of an accountholder's funds in the trust category at the same FICU. The proposed rule would provide coverage for trust funds at each FICU up to a total of $1,250,000 per grantor; in other words, each grantor's insurance limit would be $250,000 per beneficiary up to a maximum of five beneficiaries. The level of five beneficiaries is an important threshold in the current revocable trust rules, as it defines whether a grantor's coverage is determined using the simpler calculation of the number of beneficiaries multiplied by the SMSIA or the more complex calculation involving the consideration of the amount of each beneficiary's specific interest (which applies when there are six or more beneficiaries). The trust rules currently limit coverage by tying coverage to the specific interests of each beneficiary of an irrevocable trust or of each beneficiary of a revocable trust with more than five beneficiaries. The proposed rule's $1,250,000 per-grantor, per-FICU limit is more straightforward and balances the objectives of simplifying the trust rules, promoting timely payment of share insurance, facilitating liquidations, ensuring consistency with the FCU Act, and limiting risk to the Share Insurance Fund. The proposed rule would also provide parity between the NCUA's regulations and those adopted by the FDIC in early 2022.[53]

The NCUA anticipates that limiting coverage to $1,250,000 per grantor, per FICU, for trust funds would not have a substantial effect on accountholders, as most trust accounts in past FICU liquidations have had balances well below this level. The NCUA lacks sufficient information, however, to project the exact effects of the proposed limit on current accountholders and requests that commenters provide information that might be helpful in this regard.

Under the proposed rule, to determine the level of insurance coverage that would apply to funds held in trust accounts, accountholders would still need to identify the grantors and the eligible beneficiaries of the trust. The level of coverage that applies to trust accounts would no longer be affected by the specific allocation of trust funds to each of the beneficiaries of the trust or by contingencies outlined in the trust agreement. Instead, the proposed rule would provide that a grantor's trust funds are insured up to a total of $1,250,000 per grantor, or an amount up to the SMSIA multiplied by the number of eligible beneficiaries, with a limit of no more than five beneficiaries.

Aggregation

The proposed rule also provides for the aggregation of funds held in revocable and irrevocable trust accounts for the purposes of applying the share insurance limit. Under the current rules, funds held in informal revocable trust accounts and formal revocable trust accounts are aggregated for this purpose.[54] The proposed rule would aggregate a grantor's informal and formal revocable trust accounts, as well as irrevocable trust accounts. For example, all informal revocable trusts, formal revocable trusts, and irrevocable trusts held for the same grantor at the same FICU would be aggregated, and the grantor's insurance limit would be determined by how many eligible and unique beneficiaries were identified among all of their trust accounts.[55] The share insurance coverage provided in the ''trust accounts'' category would remain separate from the coverage provided for other funds held in a different right and capacity at the same FICU. However, some accountholders who currently maintain both revocable trust and irrevocable trust deposits at the same FICU may have funds in excess of the insurance limit if these separate categories are combined. The NCUA lacks data on accountholders' trust arrangements that would allow it to estimate the number of accountholders who might be affected in this manner. The agency does not believe this would impact a substantial number of accountholders but requests

[51] 73 FR 60616 (Oct. 14, 2008).

[52] For example, two co-grantors that designate five beneficiaries are insured for up to $2,500,000 (2 times 5 times $250,000).

[53] 87 FR 4455 (Jan. 28, 2022).

[54] *See* 12 CFR 745.4(a) (''All funds that an owner holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits. . . .'').

[55] For example, if a grantor maintained both an informal revocable trust account with three beneficiaries and a formal revocable trust account with three separate and unique beneficiaries, the two accounts would be aggregated and the maximum share insurance available would be $1.25 million (1 grantor times the SMSIA times the number of unique beneficiaries, limited to 5). However, if the same three people were the beneficiaries of both accounts, the maximum share insurance available would be $750,000 (1 grantor times the SMSIA times the 3 unique beneficiaries).

that commenters provide information that might be helpful in this regard.

Eligible Beneficiaries

Currently, the revocable trust rules provide that eligible beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986,[56] while the irrevocable trust rules do not establish criteria for beneficiaries. The NCUA believes that a single definition should be used to determine whether an entity is an eligible beneficiary for all trust funds and proposes to use the current revocable trust rule's definition. The NCUA believes that this single definition will result in a change in share insurance coverage only in very rare cases.

The proposed rule also would exclude from the calculation of share insurance coverage beneficiaries who only would obtain an interest in a trust if one or more named beneficiaries are deceased (often referred to as contingent beneficiaries). In this respect, the proposed rule would codify existing practice to include only primary, unique beneficiaries in the share insurance calculation.[57] This would not represent a substantive change in coverage. Consistent with treatment under the current trust rules, naming a chain of contingent beneficiaries that would obtain trust interests only in the event of a beneficiary's death would not increase share insurance coverage.

Finally, the proposed rule would codify an interpretation of the trust rules where an informal revocable trust designates the depositor's formal trust as its beneficiary. A formal trust generally does not meet the definition of an eligible beneficiary for share insurance purposes, but the NCUA has treated such accounts as revocable trust accounts under the trust rules, insuring the account as if it were titled in the name of the formal trust.[58]

Retained Interests and Ineligible Beneficiaries' Interests

The current trust rules provide that, in some instances, funds corresponding to specific beneficiaries are aggregated with a grantor's single ownership deposits at the same FICU for the purposes of the share insurance calculation. These instances include a grantor's retained interest in an irrevocable trust[59] and interests of beneficiaries who do not satisfy the definition of ''beneficiary.''[60] This adds complexity to the share insurance calculation, as a detailed review of a trust agreement may be required to value such interests so they may be aggregated with a grantor's other funds. To implement the streamlined calculation for funds held in trust accounts, the NCUA is proposing to eliminate these provisions. Under the proposed rule, the grantor and other beneficiaries who do not satisfy the definition of ''eligible beneficiary'' would not be included for the purposes of the share insurance calculation.[61] Importantly, this would not in any way limit a grantor's ability to establish such trust interests under state law. These interests simply would not factor into the calculation of share insurance coverage.

Future Trusts Named as Beneficiaries

Trusts often contain provisions for the establishment of one or more new trusts upon the grantor's death, and the proposed rule also would clarify share insurance coverage in these situations. Specifically, if a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor (or grantors), the future trust (or trusts) would not be treated as beneficiaries for the purposes of the calculation. The future trust(s) instead would be considered mechanisms for distributing trust funds, and the natural persons or organizations that receive the trust funds through the future trusts would be considered the beneficiaries for the purposes of the share insurance calculation. This clarification is consistent with the NCUA's current interpretations and would not represent a substantive change in share insurance coverage.

Naming of Beneficiaries in Share Account Records

Consistent with the current revocable trust rules, the proposed rule would continue to require the beneficiaries of an informal revocable trust to be specifically named in the account records of the FICU.[62] The NCUA does not believe this requirement imposes a burden on FICUs, as informal revocable trusts by their nature require the FICU to be able to identify the individuals or entities to which funds would be paid upon the accountholder's death.

Presumption of Ownership

The proposed rule also would state that, unless otherwise specified in a FICU's account records, funds held in an account for a trust established by multiple grantors are presumed to be owned in equal shares. This presumption is consistent with the current revocable trust rules.[63]

Funds Covered Under Other Rules

The proposed rule would exclude from coverage under § 745.4 certain trust funds that are covered by other sections of the share insurance regulations. For example, employee benefit plan accounts are insured pursuant to current § 745.9–2. In addition, if the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, funds held in connection with the trust would be treated as a joint ownership account under § 745.8. In each of these cases, the NCUA is not proposing to change the current rule.

Removal of the Appendix to Part 745

Finally, the NCUA is proposing to remove the appendix to part 745, which provides examples of share insurance coverage. The NCUA plans to update its *Your Insured Funds* brochure to reflect any amendments made to part 745.[64] The Board believes an updated brochure and other updated resources available on mycreditunion.gov will provide a more consumer friendly and easier-to-update avenue for providing examples of share insurance coverage.

The NCUA is also proposing to remove references to the appendix in the heading of part 745 and § 745.0, § 745.2, and § 745.13. This would mean that provision of the appendix would no longer satisfy the notification to members/shareholders requirement in § 745.13. Instead, FICUs would have to make available either the rules in part 745 of the NCUA's regulations or the *Your Insured Funds* brochure.

Conforming Changes

The proposed simplification of the calculation for insurance coverage for funds held in trust accounts also would permit the elimination of current § 745.2(d) of the regulations addressing

[56] 12 CFR 754.4(c).

[57] *See NCUA Your Insured Funds* at 42 (''The beneficiaries are the people or entities entitled to an interest in the trust. Contingent or alternative trust beneficiaries are not considered to have an interest in the trust funds and other assets as long as the primary or initial beneficiaries are still living, with the exception of revocable living trusts with a life estate interest.'').

[58] *See* 74 FR 55747, 55748 (Oct. 29, 2009).

[59] *See* 12 CFR 745.2(d)(4).

[60] 12 CFR 745.4(d).

[61] In the unlikely event a trust does not name any eligible beneficiaries, the NCUA would treat the funds in the trust account as funds held in a single ownership account. Such funds would be aggregated with any other single ownership funds that the grantor maintains at the same FICU and insured up to the SMSIA of $250,000.

[62] *See* 12 CFR 745.4(b).

[63] *See* 12 CFR 745.4(f).

[64] *https://mycreditunion.gov/sites/default/static-files/insured-funds-brochure.pdf.*

the valuation of trust interests. As discussed further below, the description of non-contingent interests in §§ 745.2(d)(1) and (2) would no longer be relevant to trust accounts under the proposed rule. Additionally, § 745.2(d)(3) regarding the deemed pro rata contribution of settlors to a trust would be replaced by proposed § 745.4(b)(4), which would presume equal allocation. Section 745.2(d)(4) defining a ''trust interest'' would be replaced by the proposed definition of ''irrevocable trust'' in § 745.4(a)(3).

Regarding non-contingent interests, the NCUA is also proposing to move the current description of a non-contingent interest in § 745.2(d)(1) to the definitions section of part 745. The new definition of ''non-contingent interest'' in § 745.1 would remain substantively the same but would now only be relevant to evaluating participants' non-contingent interests in shares of an employee benefit plan under § 745.9–2(a). The proposed definition of ''non-contingent interest'' would add language to include any present worth or life expectancy tables that the IRS may adopt that are similar to those set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7). This is not intended to be a substantive change but is instead intended to provide flexibility should the IRS make any changes. As part of this change, the NCUA is also proposing to make non-substantive changes to § 745.1 to improve readability. Additionally, the NCUA proposes to remove the reference to § 745.2 in current § 745.9–2.

Finally, the NCUA is proposing to redesignate current § 745.9–2 as § 745.9 to reflect the elimination of current § 745.9–1 governing irrevocable trust accounts. The reference in § 745.9–2(a) to § 745.2 would also be removed to reflect the elimination of the description of a non-contingent interest in current § 745.2(d) and adoption of a definition of ''non-contingent interest'' in proposed § 745.1.

D. Examples Demonstrating Coverage Under Current and Proposed Rules

To assist commenters, the NCUA is providing examples demonstrating how the proposed rule would apply to determine share insurance coverage for funds held in trust accounts. These examples are not intended to be all-inclusive; they merely address a few possible scenarios involving funds held in trust accounts. The NCUA expects that for most accountholders, insurance coverage would not change under the proposed rule. The examples here specifically highlight a few instances where coverage could be reduced to ensure that commenters are aware of them.

In addition, all examples involve members or those otherwise entitled to maintain insured accounts at the FICU. It is worth reiterating that share insurance coverage is only available to FICU members and those otherwise entitled to maintain insured accounts. For revocable trust accounts, all grantors must be members of the FICU or otherwise eligible to maintain an insured account to receive share insurance coverage. In the case of an irrevocable trust account, all grantors or all beneficiaries must be members of the FICU or otherwise eligible to maintain an insured account to receive share insurance coverage. Where a revocable trust account has become irrevocable because of the death of a grantor, the deceased grantor's membership will continue to satisfy their membership requirement as long as the trust account continues to be maintained at the FICU.

Example 1: Payable-on-Death Account

Member A establishes a payable-on-death account at a FICU. Member A has designated three beneficiaries for this account—B, C, and D—who will receive the funds upon member A's death and listed all three on a form provided to the FICU. The only other share account that member A maintains at the same FICU is a share draft account with no designated beneficiaries. What is the maximum amount of share insurance coverage for member A's shares at the FICU?

Under the proposed rule, member A's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. The maximum coverage for this account would be equal to the SMSIA (currently $250,000) multiplied by the number of grantors (in this case one because member A established the account) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries is less than five). Member A's payable-on-death account would be insured for up to ($250,000) times (1) times (3) = $750,000.

The coverage for member A's payable-on-death account is separate from the coverage provided for member A's share draft account, which would be insured in the single ownership category because she has not named any beneficiaries for that account. The single ownership share draft account would be insured up to the SMSIA, $250,000. Member A's total insurance coverage for shares at the FICU would be $750,000 + $250,000 = $1,000,000. Notably, this level of coverage is the same as that provided by the current share insurance rules.

Example 2: Formal Revocable Trust and Informal Revocable Trust

Members E and F jointly establish a payable-on-death account at a FICU. Members E and F have designated three beneficiaries for this account—G, H, and I—who will receive the funds after both members E and F are deceased. They list these beneficiaries on a form provided to the FICU. Members E and F also jointly establish an account titled in the name of the ''E and F Living Trust'' at the same FICU. Members E and F are the grantors of the living trust, a formal revocable trust that includes the same three beneficiaries, G, H, and I. The grantors, members E and F, do not maintain any other share accounts at this same FICU. What is the maximum amount of share insurance coverage for members E and F's shares?

Under the proposed rule, members E and F's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. Members E and F's living trust account constitutes a formal revocable trust and would also be insured in the trust accounts category. To the extent the funds in these accounts would pass from the same grantor (E or F) to beneficiaries (G, H, and I), the funds would be aggregated for the purpose of applying the share insurance limit. As under the current rules, it would be irrelevant that the grantors' shares are divided between the payable-on-death account and the living trust account.

The maximum coverage for members E and F's shares would be equal to the SMSIA ($250,000) multiplied by the number of grantors (two, because members E and F are the grantors with respect to both accounts) multiplied by the number of unique beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the coverage for E and F's trust accounts would be: ($250,000) times (2) times (3) = $1,500,000. This level of coverage is the same as that provided by the current share insurance rules.

Example 3: Two-Owner Trust and a One-Owner Trust

Members J and K jointly establish a payable-on-death account at a FICU. Members J and K have designated three beneficiaries for this account—L, M, and N—who will receive the funds after both J and K are deceased. They list these beneficiaries on a form provided to the FICU. At the same FICU, member

J establishes a payable-on-death account and designates member K as the beneficiary upon J's death. What is the maximum amount of coverage for members J and K's shares?

Under the proposed rule, both accounts would be insured under the trust account category. To the extent these shares would pass from the same grantor (J or K) to beneficiaries (such as L, M, and N), they would be aggregated for the purpose of applying the share insurance limit. For example, member K identified three beneficiaries (L, M, and N), and therefore, member K's insurance limit is $750,000 (or 1 times 3 times SMSIA). Member K would be fully insured as long as one-half interest of the co-owned trust account was $750,000 or less, which is the same level of coverage provided under current rules. In this example, member J's situation differs from member K's because J has a second trust account, but the insurance calculation remains the same. Specifically, member J has two trust accounts and identified four unique beneficiaries (L, M, N, and K); therefore, member J's insurance limit is $1,000,000 (or 1 times 4 times SMSIA). Member J would remain fully insured as long as J's trust shares—equal to one-half of the co-owned trust account plus J's personal trust account—total no more than $1,000,000. This methodology and level of coverage is the same as that provided by the current share insurance rules.

Example 4: Revocable and Irrevocable Trusts

Member O establishes a share account at a FICU titled the ''O Living Trust.'' Member O is the grantor of this living trust, a formal revocable trust that includes three beneficiaries—P, Q, and R. The grantor, member O, also establishes an irrevocable trust for the benefit of the same three beneficiaries. The trustee of the irrevocable trust maintains a share account at the same FICU as the living trust account, titled in the name of the irrevocable trust. Neither member O nor the trustee maintains other share accounts at the same FICU. What is the insurance coverage for these accounts?

Under the proposed rule, the living trust account is a formal revocable trust and would be insured in the trust accounts category. The account containing the funds from the irrevocable trust account would also be insured in the trust accounts category. To the extent these shares would pass from the same grantor (member O) to beneficiaries (P, Q, or R), they would be aggregated for the purposes of applying the share insurance limit. It would be irrelevant that the shares are divided between the living trust account and the irrevocable trust account. The maximum coverage for these shares would be equal to the SMSIA ($250,000) multiplied by the number of grantors (one, because member O is the grantor with respect to both accounts) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the maximum coverage for the shares in the trust accounts would be: ($250,000) times (1) times (3) = $750,000.

This is one of the isolated instances where the proposed rule may provide a reduced amount of coverage as a result of the aggregation of revocable and irrevocable trust accounts, depending on the structure of the trust agreement. Under the current rules, member O would be insured for up to $750,000 for revocable trust shares and separately insured for up to $750,000 for irrevocable trust shares (assuming non-contingent beneficial interests), resulting in $1,500,000 in total coverage. If that were the case, current coverage would exceed that provided by the proposed rule. However, the terms of irrevocable trusts sometimes lead to less coverage than expected. It is often the case that irrevocable trust accounts are only insured up to $250,000 under the current rules due to contingencies in the trust agreement, but determining this with certainty often requires careful consideration of the trust agreement's contingency provisions. Under the current rule, if contingencies existed, current coverage would exceed that provided by the proposed rule, as member O would be insured up to $1,000,000; $750,000 for the revocable trust and $250,000 for the irrevocable trust. In the NCUA's view, one of the key benefits of the proposed rule versus the current rule would be greater clarity and predictability in share insurance coverage because whether contingencies exist would no longer be a factor that could affect share insurance.

Example 5: Many Beneficiaries Named

Member S establishes a share account at a FICU titled in the name of the ''S Living Trust.'' This trust is a revocable trust naming seven beneficiaries—T, U, V, W, X, Y, and Z. The grantor, member S, does not maintain any other shares at the same FICU. What is the coverage for this account?

Under the proposed rule, the living trust is a formal revocable trust and would be insured in the trust accounts category. The maximum coverage for this account would be equal to the SMSIA ($250,000) multiplied by the number of grantors (one, because member S is the sole grantor) multiplied by the number of beneficiaries, up to a maximum of five. Here the number of named beneficiaries (seven) exceeds the maximum (five), so insurance is calculated using the maximum (five). Coverage for the account would be: ($250,000) times (1) times (5) = $1,250,000.

This is another limited instance where the proposed rule may provide for less coverage than the current rule. Under the current rule, because more than five beneficiaries are named, the account is insured up to the greater of the following: (1) five times the SMSIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMSIA. Determining coverage requires review of the trust agreement to ascertain each beneficiary's interest. Each such insurable interest is limited to the SMSIA, and the total of all these interests is compared with $1,250,000 (five times the SMSIA). The current rule provides coverage in the greater of these two amounts. The result would fall into a range from $1,250,000 to $1,750,000, depending on the precise allocation of trust interests among the beneficiaries.[65] In the NCUA's view, one of the key benefits of the proposed rule versus the current rule would be greater clarity and predictability in share insurance coverage because a single formula would be used to determine maximum coverage, and this formula would not depend upon the specific allocation of funds among beneficiaries.

E. Request for Comment

The NCUA is requesting comment on all aspects of the proposed rule. Comment is specifically invited with respect to the following questions:

- Would the proposed amendments to the share insurance rules make insurance coverage for trust accounts easier to understand for FICUs and the public?
- The NCUA believes that accountholders generally would have the information necessary to readily calculate share insurance coverage for their trust accounts under the proposed rule, allowing them to better understand

[65] For example, if all the beneficiaries' interests were equal, coverage would be: $250,000 times (7 beneficiaries) = $1,750,000. This is the maximum coverage possible under the current rule. Conversely, if a few beneficiaries had a large interest in the trust, the total of all beneficiaries' interests (limited to the SMSIA per beneficiary) could be less than $1,250,000, in which case the current rule would provide a minimum of $1,250,000 in coverage. Depending upon the precise allocation of interests, the amount of coverage provided would fall somewhere within this range.

insurance coverage for their trust accounts. Are there instances where an accountholder would not likely have the necessary information?

- Are there any other types of trusts not described in this proposal whose funds maintained in FICU accounts would be affected by the proposed rule if adopted? What types of trusts are those, and how would they be impacted?
- While the NCUA has substantial experience regarding trust arrangements, the NCUA does not possess sufficiently detailed information on accountholders' existing trust arrangements to allow the NCUA to project the proposed rule's effects on current accountholders. Are there any other sources of empirical information the NCUA should consider that may be helpful in understanding the effects of the proposed rule? The NCUA also encourages commenters to provide such information, if possible.
- Grandfathering of the share insurance rules would result in significantly greater complexity for the period during which two sets of rules could apply to accounts—especially in conducting liquidations. Therefore, the NCUA is not inclined to consider allowing grandfathering but prefers to rely on a delayed implementation date to allow stakeholders to make necessary adjustments because of the new rules. However, the NCUA recognizes there are instances, such as trusts holding share certificates or other account relationships, which may not be easily restructured without adverse consequences to the accountholder. Are there fact patterns where grandfathering the current rules may be appropriate? Would grandfathering be appropriate with respect to the proposed rule's coverage limit of $1,250,000 per FICU for an accountholder's funds held in trust accounts?
- Are the examples provided clear and understandable? Are there other common trust scenarios that would benefit from an example being provided?
- Historically, the NCUA has maintained the position that the membership requirement for a revocable trust account is satisfied when all grantors (sometimes described as settlors) of the trust are members of the FICU or otherwise eligible to maintain an insured account. For an irrevocable trust account, the NCUA has said that the membership requirement is satisfied if either all the grantors/settlors or all the beneficiaries of the trust are members of the FICU or otherwise eligible to maintain an insured account. Are there alternatives the NCUA should consider for fulfilling the membership requirement for share insurance coverage of revocable and irrevocable trust accounts? Should informal revocable trust accounts that are established with a right of survivorship be treated akin to joint accounts with member and nonmember co-owners who own the account with a right of survivorship?[66] Should a trustee who deposits funds at a FICU pursuant to a revocable or irrevocable trust they administer be considered to be maintaining a member account, providing share insurance coverage to eligible beneficiaries?
- Are there any other amendments to the share insurance rules applicable to trusts that the NCUA should consider?

III. Amendments to Mortgage Servicing Account Rule

A. Policy Objectives

The NCUA's regulations governing share insurance coverage include specific rules on accounts maintained at FICUs by mortgage servicers.[67] These rules are intended to be easy to understand and apply in determining the amount of share insurance coverage for a mortgage servicer's account. The NCUA generally strives to maintain parity with FDIC's regulations in furtherance of this aim.

The NCUA is proposing an amendment to its rules governing insurance coverage for accounts maintained at FICUs by mortgage servicers that consist of mortgagors' principal and interest payments. The proposed rule would mirror a change made by the FDIC in early 2022,[68] scheduled to become effective in April 2024, intended to address a servicing arrangement that is not addressed in the current rules. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the mortgage servicing account (MSA) with principal and interest payments collected directly from mortgagors. The FDIC reasoned that the factors that motivated the FDIC to establish its current rules for mortgage servicing accounts, which the NCUA also adopted and are further described below, weigh in favor of treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers. The FDIC also noted that it seeks to avoid uncertainty concerning the extent of deposit insurance coverage for such accounts. The NCUA concurs with the importance of avoiding uncertainty regarding the extent of insurance coverage and believes that an important aspect of avoiding uncertainty is maintaining parity between the share insurance and deposit insurance regimes.

B. Background and Need for Rulemaking

The NCUA's rules governing coverage for MSAs were last amended in 2008 and corresponded to changes made by the FDIC. More specifically, in 2008 the FDIC recognized that securitization methods and vehicles for mortgages had become more complex, exacerbating the difficulty of determining the ownership of deposits consisting of principal and interest payments by mortgagors and extending the time required to make a deposit insurance determination for deposits of a mortgage servicer in the event of an insured depository institution's (IDI's) failure.[69] The FDIC expressed concern that a lengthy insurance determination could lead to continuous withdrawal of deposits of principal and interest payments from IDIs and unnecessarily reduce a funding source for such institutions. The FDIC therefore amended its rules to provide coverage to lenders based on each mortgagor's payments of principal and interest into the MSA, up to the standard maximum deposit insurance amount (SMDIA) (currently $250,000) per mortgagor. The FDIC did not amend the rule for coverage of tax and insurance payments, which continued to be insured to each mortgagor on a pass-through basis and aggregated with any other deposits maintained by each mortgagor at the same IDI in the same right and capacity. The NCUA agreed that this treatment of principal and interest payments provided greater and fairer coverage for credit union members and decided to take the same approach in its share insurance rules.[70]

Importantly, the 2008 amendments to the rules for MSAs did not provide for the fact that servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders. However, in its recent rulemaking the FDIC identified that this

[66] *See* 12 CFR 745.8(e) (''A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.'').

[67] 12 CFR 745.3(a)(3).

[68] 87 FR 4455 (Jan. 28, 2022).

[69] *See* 73 FR 61658, 61658–59 (Oct. 17, 2008).

[70] 73 FR 62856, 62857 (Oct. 22, 2008).

is required of mortgage servicers in some instances. For example, the FDIC noted that some IDIs identified challenges to implementing certain recordkeeping requirements with respect to MSA deposit balances because of the way in which servicer advances are administered and accounted.[71]

The NCUA's and the FDIC's rules currently in effect provide coverage for principal and interest funds only to the extent ''paid into the account by the mortgagors''; they do not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments. As a result, advances are not provided the same level of coverage as other deposits in an MSA consisting of principal and interest payments directly from the borrower, which are insured up to the SMSIA/SMDIA for each borrower. Instead, the advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. In adopting changes to its rule in early 2022, the FDIC expressed concern that this inconsistent treatment of principal and interest amounts could result in financial instability during times of stress, and could further complicate the insurance determination process, a result that is inconsistent with their policy objective. The NCUA shares these concerns and believes it is important that parity is maintained between the insurance regimes.

C. Description of Proposed Rule

The NCUA is proposing to amend the rules governing coverage for funds in MSAs to provide parity with the FDIC's regulation and provide consistent share insurance treatment for all MSA balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) to satisfy a periodic obligation to remit principal and interest due to the lender. Under the proposed rule, accounts maintained by a mortgage servicer in an agency, custodial, or fiduciary capacity, which consist of payments of principal and interest, would be insured for the cumulative balance paid into the account to satisfy principal and interest obligations to the lender, whether paid directly by the borrower or by another party, up to the limit of the SMSIA per mortgagor. Mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers would therefore be insured up to the SMSIA per mortgagor, consistent with the coverage rules for payments of principal and interest collected directly from borrowers.

The composition of an MSA attributable to principal and interest payments would also include collections by a servicer, such as foreclosure proceeds, that are used to satisfy a borrower's principal and interest obligation to the lender. In some cases, foreclosure proceeds may not be paid directly by a mortgagor. The current rule does not address whether foreclosure collections represent payments of principal and interest by a mortgagor. Under the proposed rule, foreclosure proceeds used to satisfy a borrower's principal and interest obligation would be insured up to the limit of the SMSIA per mortgagor.

The proposed rule would make no change to the share insurance coverage provided for MSAs comprised of payments from mortgagors of taxes and insurance premiums. Such aggregate escrow accounts are held separately from the principal and interest MSAs, and the funds therein are held for the mortgagors until such time as tax and insurance payments are disbursed by the servicer on the borrower's behalf. Under the proposed rule, such funds would continue to be insured based on the ownership interest of each mortgagor in the account and aggregated with other funds maintained by the mortgagor at the same FICU in the same capacity and right.

D. Request for Comment

The NCUA is requesting comment on all aspects of the proposed rule. Comment is specifically invited with respect to the following questions:

- Would the proposed amendments to the rules governing coverage for MSAs adequately address servicers' practices with respect to these accounts, as described above? Are there any other funds representing principal and interest that are commingled with borrowers' payments that the NCUA should consider in the share insurance calculation, consistent with its policy objectives?
- Would share insurance coverage of servicer principal and interest advances help to promote financial stability in the financial system? If the NCUA does not amend the rule as proposed, how would mortgage servicers react if their FICU, or the credit union industry as a whole, appears stressed? How would funding arrangements or deposit relationships change?
- Are there any alternatives to the proposed rule that would better achieve the NCUA's policy objectives in connection with this rulemaking? Are there any other amendments to the share insurance rules applicable to MSAs that the NCUA should consider?
- If the NCUA opts to issue a final rule adopting the proposed change is there any reason to delay its effective date, as is being contemplated for the proposed changes to trust accounts? Or should the NCUA make the change effective as soon as possible?

IV. Recordkeeping Requirements

A. Policy Objectives

The NCUA's regulations governing share insurance coverage include general principles applicable in determining insurance of accounts.[72] Among these general principles are provisions addressing recordkeeping.[73] The NCUA intends for these provisions to clearly articulate the records the agency will look to in order to evaluate insurance coverage. As discussed in more detail below, over time it has become apparent that the recordkeeping provisions do not clearly address all situations and may be especially unclear as to accounts maintained by an agent, custodian, fiduciary, or other party on behalf of a member or beneficial owner eligible to maintain an insured account at a FICU. To better address these situations, the NCUA proposes to amend the recordkeeping requirements as discussed below.

B. Background and Need for Rulemaking

Section 745.2(c) of the NCUA's regulations addresses general recordkeeping requirements. Other recordkeeping requirements applicable to specific account types are addressed as needed in the relevant sections of part 745. Current § 745.2(c)(1) provides that, as a general matter, the account records of the FICU shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

Section 745.2(c)(2) provides that, if the account records of a FICU disclose

[71] The FDIC noted that, to fulfill their contractual obligations with investors, covered IDIs maintain mortgage principal and interest balances at a pool level and remittances, advances, advance reimbursements, and excess funds applications that affect pool-level balances are not allocated back to individual borrowers.

[72] 12 CFR 745.2.

[73] 12 CFR 745.2(c).

the existence of a relationship which may provide a basis for additional insurance, as required under § 745.2(c)(1), the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the FICU or the records of the member maintained in good faith and in the regular course of business. It is this provision that has raised questions regarding accounts maintained by an agent, fiduciary, or similar party. Specifically, the NCUA has received several questions regarding whether records maintained by an agent, fiduciary, or similar third party on behalf of the member or beneficial owner eligible to maintain an insured account would qualify as the ''records of the member.'' Due to the frequency with which these agent or fiduciary arrangements will involve a party other than the FICU or member maintaining records on the FICU's or member's behalf, the NCUA is proposing to add language explicitly clarifying that such records, when maintained in good faith and in the regular course of business, can be looked to when evaluating the details of the relationship and the interest of other parties in the account at the FICU.

C. Description of Proposed Rule

Section 745.3(a)(2) of the NCUA's regulations provides that when an account is held by an agent or nominee, funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to the SMSIA in the aggregate. The NCUA will also generally look to the principal or beneficial owner for satisfying the membership requirement or other eligibility to maintain an insured account at the FICU. As such, records maintained by an agent or nominee on behalf of the member principal or beneficial owner may not clearly be considered ''records of the member'' for the purpose of ascertaining their interests in the account under current § 745.2(c)(2).

The NCUA's Office of General Counsel has previously issued a legal opinion stating that where an agent or custodian ''has an agreement with the beneficial owner/member to maintain custody of the beneficial owner/member's records, [the] NCUA would consider those records to be 'records of the member' within the meaning of 12 CFR 745(c)(2).'' [74] However, the NCUA acknowledges that it would be beneficial for the regulation to more clearly address this situation to allow the details of the relationship and the interests of other parties in the account to be ascertainable either from the account records of the FICU or from records maintained, in good faith and in the regular course of business, by the member or by some person or entity that has undertaken to maintain such records for the member. Such a change would provide much greater clarity, particularly in the event of multi-tiered fiduciary relationships, and would more closely compare to language previously adopted by the FDIC.[75] Importantly, the NCUA retains discretion to determine when records are maintained on behalf of a member, in good faith and in the regular course of business. Ultimately, the NCUA must be able to establish ownership interests in the account by following the chain of records maintained by parties at each level of the relationship from the account records maintained at the FICU.

Additionally, § 745.2(c)(3) of the current regulations provides that the account records of a FICU in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee. This requirement goes beyond the recordkeeping requirements of § 745.2(c)(1) through (2) and poses an unnecessary burden on FICUs and their members. Further, the FDIC previously eliminated a similar requirement.[76] To eliminate unnecessary recordkeeping complexity and provide parity with FDIC, the NCUA is proposing to eliminate current § 745.2(c)(3).

Section 745.2(c)(4) states that the interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common. The NCUA is not proposing any substantive amendments to this provision but is proposing to move it to § 745.2(c)(3) given the proposed elimination of the current requirement in that section.

Finally, § 745.14(a)(2) notes that interest on lawyers' trust accounts (IOLTAs) and other similar escrow accounts are subject to the recordkeeping requirements of § 745.2(c)(1) and (2). In doing so, § 745.14(a)(2) provides an example of how the details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from the records of the FICU or from records maintained, in good faith and in the regular course of business, by the member attorney or member escrow agent administering the account. The NCUA proposes to amend this description to conform to the change to § 745.2(c)(2) to explicitly state that the records detailing the relationship and the interest of other parties in the account must be maintained, in good faith and in the regular course of business, by (1) the FICU or (2) the member attorney or member escrow agent, or a person or entity acting on their behalf.

D. Request for Comment

The NCUA is requesting comment on all aspects of the proposed rule. Comment is specifically invited with respect to the following questions:

- Would the proposed amendments to the recordkeeping requirements in part 745 provide adequate clarity for FICUs, members, and other relevant third parties as to the records the NCUA will look to in evaluating the details of account relationships and the interests of other parties in accounts maintained at FICUs?
- Are there any alternatives to the proposed rule that would better achieve the NCUA's policy objectives in connection with this rulemaking?
- Are there any other amendments to the recordkeeping requirements applicable to the share insurance rules that the NCUA should consider? For example, should the NCUA consider adopting a definition of ''account records'' similar to the definition the FDIC has provided for ''deposit account records'' in its regulations governing deposit insurance coverage? [77] Or, similarly, should the NCUA adopt specific provisions addressing multi-tiered fiduciary relationships like the FDIC has done? [78]
- Relatedly, the FDIC has adopted regulations to facilitate prompt payment of FDIC-insured deposits when large IDIs fail.[79] The FDIC's recordkeeping for timely deposit insurance determination regulations require each IDI that has two million or more deposit accounts to (1)

[74] NCUA Legal Op. 97–0909 (Feb. 6, 1998), *available at https://www.ncua.gov/regulation-supervision/legal-opinions/1997/pass-through-insurance.*

[75] 12 CFR 330.5(b)(2).

[76] 51 FR 21137 (June 11, 1986).

[77] *See* 12 CFR 330.1 (''*Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.'').

[78] *See* 12 CFR 330.5(b)(3).

[79] *See* 12 CFR part 370.

configure its information technology system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the institution's failure, and (2) maintain complete and accurate information needed by the FDIC to determine deposit insurance coverage with respect to each deposit account, except as otherwise provided. These requirements are intended to facilitate the FDIC's prompt payment of deposit insurance after the failure of covered IDIs. By law, the FDIC must pay deposit insurance ''as soon as possible'' after an IDI fails while also resolving the IDI in the manner least costly to the Deposit Insurance Fund.[80] Similarly, the FCU Act requires the NCUA to pay accountholders ''as soon as possible'' after a FICU liquidation.[81] Should the NCUA consider adopting similar requirements for FICUs? If so, would a lower threshold, such as 500,000 or 1 million member accounts, be more appropriate?

- If the NCUA opts to issue a final rule adopting the proposed change, is there any reason to delay its effective date, as contemplated for the proposed changes to trust accounts? Or should the NCUA make the change effective as soon as permitted by law?

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for the purposes of the RFA to include credit unions with assets less than $100 million) [82] and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The NCUA fully considered the potential economic impact of the proposed changes during the development of the proposed rule. As noted in the preamble, the proposed rule would simplify the NCUA's current share insurance regulations covering various types of trust accounts. It would also provide more flexibility on the coverage of MSAs. Finally, it would explicitly provide for additional flexibility in what records the NCUA can look to when determining the details of account relationships and various parties' interests in the accounts.

In short, the NCUA believes the principal impact of the proposed rule will be to streamline its administrative procedures for insurance payouts on trust accounts when FICUs fail. While the proposed rule would require FICUs and their members to be familiar with the new trust rules and the coverage limits imposed on trust accounts, the NCUA believes this will not impose any new significant burden on FICUs, may ease some existing requirements, and should reduce the complexity of questions FICUs receive from their members on share insurance coverage. Additionally, FICUs and their members are familiar with the proposed formula as it is already applied to revocable trust accounts with five or fewer beneficiaries. The formula is also simpler to understand and implement than the previous rules governing revocable trust accounts with six or more beneficiaries and irrevocable trusts. The proposed changes to the rule governing coverage of MSAs and the changes to the recordkeeping requirements should only provide greater flexibility for coverage of these accounts and should not cause any new burden on FICUs or their members. Accordingly, the NCUA certifies that it would not have a significant economic impact on a substantial number of small FICUs.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[83] For the purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, each referred to as an information collection. The NCUA 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 proposed rule does not contain information collection requirements that require approval by OMB under the PRA. The proposed rule will not create new or modify any existing paperwork burdens. Rather, the proposed rule will simplify the share insurance regulations by merging the revocable and irrevocable trust account categories into one trust account category and applying a simpler, common calculation method to determine insurance coverage for funds held in revocable and irrevocable trust accounts. The proposed rule will also provide consistent share insurance treatment for all MSA balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers or paid into the account by another party (such as the servicer) to satisfy a periodic obligation to remit principal and interest due to the lender. Finally, the proposed rule will also explicitly allow the NCUA, when making share insurance determinations, to look to records held in the normal course of business that are maintained by parties other than a FICU and its members on their behalf. As such, no PRA submissions to OMB will be made with respect to this proposed rule. The NCUA invites comments on its PRA determination.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order to adhere to fundamental federalism principles. This proposed rule would only impact the NCUA's regulations related to share insurance coverage; it would not affect state law related to trust accounts. The proposed rule would also not alter the NCUA's relationship or division of responsibilities with state regulatory agencies or bodies because the proposed rule would affect the NCUA's Federal share insurance determinations exclusively. This proposal would not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for the purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681

[80] 12 U.S.C. 1821(f)(1); 12 U.S.C. 1823(c)(4).

[81] 12 U.S.C. 1787(d)(1).

[82] *See* 80 FR 57512 (Sept. 24, 2015).

[83] 44 U.S.C. 3507(d).

(1998). Under this statute, if the agency determines the proposed regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

The NCUA has determined that the implementation of this proposed rule would not negatively affect family well-being, but rather would strengthen it. The NCUA believes that any effect would be limited because the change may not affect many accounts, and members or others maintaining those accounts would have time and notice to modify the accounts before the NCUA adopts and implements any final rule on this subject. Overall, the NCUA believes that the proposed rule would not negatively affect family well-being despite this possible effect but welcomes public comment on this issue. If the NCUA ultimately finds that the rule would have a negative effect as the statute describes, it believes the benefits that the preamble describes in simplifying coverage and potentially reducing costs for the NCUA and for FICUs would support implementing the rule.

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as *regulations.gov*).

In summary, the proposed rule would simplify the share insurance regulations by establishing a ''trust accounts'' category that would provide for coverage of funds of both revocable trusts and irrevocable trusts deposited at FICUs, provide consistent share insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender, and provide more flexibility for the NCUA to consider various records in determining share insurance coverage in liquidations.

The proposal and the required summary can be found at *https://www.regulations.gov.*

List of Subjects in 12 CFR Part 745

Credit, Credit Unions, Share Insurance.

By the National Credit Union Administration Board on October 19, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE COVERAGE

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109–351;120 Stat. 1966.

■ 2. The heading for part 745 is revised to read as set forth above.

§ 745.0 [Amended]

■ 3. Amend § 745.0 by removing the words ''and appendix''.

■ 4. Revise § 745.1 to read as follows:

§ 745.1 Definitions.

For the purposes of this part:

Account or *accounts* mean share, share certificate, or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state-chartered credit unions) of a member (which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

Member or *members* mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state-chartered credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

Non-contingent interest means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

Political subdivision includes any subdivision of a public unit, as defined in paragraph (c) of this section, or any principal department of such public unit,

(1) The creation of which subdivision or department has been expressly authorized by state statute;

(2) To which some functions of government have been delegated by state statute; and

(3) To which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

Public unit means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

Standard maximum share insurance amount referred to as the ''SMSIA'' hereafter, means $250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)).

■ 5. Amend § 745.2 by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (c)(2);
■ c. Removing paragraph (c)(3);
■ d. Redesignating paragraph (c)(4) as paragraph (c)(3);
■ e. Removing paragraph (d); and
■ f. Redesignating paragraphs (e) and (f) as paragraphs (d) and (e).

The revisions read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

(a) *General.* This part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part. While the provisions of this part govern in determining share insurance coverage, to the extent local law enters into a share insurance determination, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of other jurisdictions where the insured credit union has offices or service facilities.

* * * * *

(c) * * *

(2) If the account records of an insured credit union disclose the

existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member, maintained in good faith and in the regular course of business by the member or by some person or entity that has undertaken to maintain such records for the member.

* * * * *

■ 6. Amend § 745.3 by revising paragraph (a)(3) to read as follows:

§ 745.3 Single ownership accounts.

(a) * * *

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments of principal and interest, shall be insured for the cumulative balance paid into the account by mortgagors, or in order to satisfy mortgagors' principal or interest obligations to the lender, up to the limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts.

* * * * *

■ 7. Revise § 745.4 to read as follows:

§ 745.4 Trust accounts.

(a) *Scope and definitions.* This section governs coverage for funds held in connection with informal revocable trusts, formal revocable trusts, and irrevocable trusts. For the purposes of this section:

(1) *Informal revocable trust* means a trust under which deposited funds pass directly to one or more beneficiaries upon the owner's death without a written trust agreement, commonly referred to as a payable-on-death account, in-trust-for account, or Totten trust account.

(2) *Formal revocable trust* means a revocable trust established by a written trust agreement under which deposited funds pass to one or more beneficiaries upon the grantor's death.

(3) *Irrevocable trust* means an irrevocable trust established by statute or a written trust agreement, except as described in paragraph (e) of this section.

(b) *Calculation of coverage*—(1) *General calculation.* Deposited trust funds are insured in an amount up to the SMSIA multiplied by the total number of beneficiaries identified by each grantor, up to a maximum of five beneficiaries.

(2) *Aggregation for purposes of insurance limit.* Deposited trust funds that pass from the same grantor to beneficiaries are aggregated for the purposes of determining coverage under this section, regardless of whether those funds are held in connection with an informal revocable trust, formal revocable trust, or irrevocable trust.

(3) *Separate insurance coverage.* The share insurance coverage provided under this section is separate from coverage provided for other funds at the same federally insured credit union.

(4) *Equal allocation presumed.* Unless otherwise specified in the account records of the federally insured credit union, deposited funds held in connection with a trust established by multiple grantors are presumed to have been owned or funded by the grantors in equal shares.

(c) *Number of beneficiaries.* The total number of beneficiaries for trust funds deposited under paragraph (b) of this section will be determined as follows:

(1) *Eligible beneficiaries.* Subject to paragraph (c)(2) of this section, beneficiaries include natural persons, as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986, as amended.

(2) *Ineligible beneficiaries.* Beneficiaries do not include:

(i) The grantor of a trust; or

(ii) A person or entity that would only obtain an interest in the deposited funds if one or more named beneficiaries are deceased.

(3) *Future trust(s) named as beneficiaries.* If a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor(s) (''future trusts''), the future trust(s) are not treated as beneficiaries of the trust; rather, the future trust(s) are viewed as mechanisms for distributing trust funds, and the beneficiaries are the natural persons or organizations that shall receive the trust funds through the future trusts.

(4) *Informal trust account payable to member's formal trust.* If an informal revocable trust designates the account owner's formal trust as its beneficiary, the informal revocable trust account will be treated as if titled in the name of the formal trust.

(d) *Account records*— (1) *Informal revocable trusts.* The beneficiaries of an informal revocable trust must be specifically named in the account records of the federally insured credit union.

(2) *Formal revocable trusts.* The title of a formal trust account must include terminology sufficient to identify the account as a trust account, such as ''family trust'' or ''living trust,'' or must otherwise be identified as a testamentary trust in the account records of the federally insured credit union. If eligible beneficiaries of such formal revocable trust are specifically named in the account records of the federally insured credit union, the NCUA shall presume the continued validity of the named beneficiaries' interest in the trust.

(e) *Deposited funds excluded from coverage under this section*—(1) *Revocable trust co-owners that are sole beneficiaries of a trust.* If the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposited funds held in connection with the trust are treated as joint ownership funds under § 745.8.

(2) *Employee benefit plan deposits.* Deposited funds of employee benefit plans, even if held in connection with a trust, are treated as employee benefit plan funds under § 745.9.

§ 745.9–1 [Removed]

■ 8. Remove § 745.9–1.

§ 745.9–2 [Redesignated as § 745.9 and Amended]

■ 9. Redesignate § 745.9–2 as § 745.9 and remove the words '', in accordance with § 745.2 of this part'' in newly redesignated paragraph (a).

§ 745.13 [Amended]

■ 10. Amend § 745.13 by removing the words ''the appendix''.

■ 11. Amend § 745.14 by revising paragraph (a)(2) to read as follows:

§ 745.14 Interest on lawyers trust accounts and other similar escrow accounts.

(a) * * *

(2) Pass-through coverage will only be available if the recordkeeping requirements of § 745.2(c)(1) of this part and the relationship disclosure requirements of § 745.2(c)(2) of this part are satisfied. In the event those requirements are satisfied, funds attributable to each client and principal will be insured on a pass-through basis in whatever right and capacity the client or principal owns the funds. For example, an IOLTA or other similar escrow account must be titled as such, and the underlying account records of the insured credit union must sufficiently indicate the existence of the relationship on which a claim for insurance is founded. The details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from

the records of the insured credit union or from records maintained, in good faith and in the regular course of business, by the attorney or the escrow agent administering the account, or by some person or entity that has undertaken to maintain such records for the attorney or escrow agent. The NCUA will determine, in its sole discretion, the sufficiency of these records for an IOLTA or other similar escrow account.

* * * * *

Appendix to Part 745 [Removed]

■ 12. Remove Appendix to Part 745.

[FR Doc. 2023–23481 Filed 10–24–23; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2001; Project Identifier MCAI–2023–00666–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–20–13, which applies to certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. AD 2021–20–13 requires repetitive lubrication and repetitive detailed visual inspections (DVI) and non-destructive test (NDT) inspections of the main landing gear (MLG) shock strut lower pins, and replacement if necessary. Since the FAA issued AD 2021–20–13, Bombardier, Inc. developed a new design solution for this potential failure. This proposed AD would continue to require the lubrication and inspections specified in AD 2021–20–13 until the MLG shock strut assembly is modified by replacing the trailing arm bushing and installing new dynamic joint components. 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 December 11, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2001; 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 service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* website bombardier.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2001; Project Identifier MCAI–2023–00666–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 the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–20–13, Amendment 39–21751 (86 FR 57033, October 14, 2021) (AD 2021–20–13), for certain Bombardier, Inc., CL–600–2B16 (604 Variant) airplanes. AD 2021–20–13 was prompted by an MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2020–54R1, dated December 23, 2020 (Transport Canada AD CF–2020–54R1), to correct an unsafe condition identified as cracking of the MLG shock strut lower pin part number 19146–3. Transport Canada AD CF–2020–54R1 states that friction torque, when the shock strut is under compression loading, causes the pin anti-rotation tangs to become loaded beyond their load carrying capability. According to Transport Canada, this overload condition can result in pin fracture originating at the base of the pin anti-rotation tang and is aggravated by inadequate lubrication.

AD 2021–20–13 requires repetitively lubricating, repetitively inspecting (DVI and NDT inspections for cracking and damage, including fracture of the MLG shock strut lower pin at the pin rotation tang location), and replacing the MLG shock strut lower pin if there is any

cracking or damage as a result of the inspections. The FAA issued AD 2021–20–13 to address cracking of the MLG shock strut lower pin. If not addressed, this condition could result in structural failure of one or both MLG.

Actions Since AD 2021–20–13 Was Issued

Since the FAA issued AD 2021–20–13, Transport Canada superseded Transport Canada AD CF–2020–54R1 and issued Transport Canada AD CF–2023–32, dated May 9, 2023 (referred to after this as ''the MCAI''). The MCAI states there is a new design solution for this potential failure of the shock strut lower pin, which involves replacing the training arm bushings at the attachment and reassembly of the MLG shock strut assembly to training arm assembly joint with new dynamic joint components. As a result, the MCAI requires this new design as terminating action for the requirements of Transport Canada AD CF–2020–54R1.

Bombardier, Inc. also reduced the range of one group of applicable aircraft from serial numbers 6050 through 6999 to 6050 through 6188. Bombardier, Inc. advises that subsequent aircraft are scheduled to have the new design completed in production. Therefore, the FAA has revised the applicability of this proposed AD accordingly.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2001.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier, Inc., service information:

- Service Bulletin 604–32–031, dated December 29, 2022.
- Service Bulletin 605–32–008, dated December 29, 2022.
- Service Bulletin 650–32–005, dated December 29, 2022.

This service information contains procedures for disassembling the left- and right-hand MLG shock strut and trailing arm joint, replacing the trailing arm bushings at the attachment, and re-assembling the joint with new dynamic joint components. These documents are distinct since they apply to different airplane configurations.

This proposed AD would also require the following Bombardier, Inc., service information, which the Director of the Federal Register approved for incorporation by reference as of November 18, 2021 (86 FR 57033, October 14, 2021):

- Service Bulletin 604–32–030, dated June 30, 2020.
- Service Bulletin 605–32–007, dated June 30, 2020.
- Service Bulletin 650–32–004, dated June 30, 2020.

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 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 and service information referenced above. The FAA is issuing this NPRM after determining that unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2021–20–13 until the MLG shock strut assembly to trailing arm assembly joint is modified by accomplishing the actions specified in the service information described previously.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 433 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
Lubrication and inspections (retained actions from AD 2021–20–13).	7 work-hours × $85 per hour = $595.	$0	$595 per cycle	$257,635 per cycle.
Modification and testing (new proposed actions).	9 work-hours × $85 per hour = $765.	2,435	3,200	1,385,600.

The FAA estimates the following costs to do any necessary on-condition replacement that would be required based on the results of the repetitive inspections. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION REPLACEMENT

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	$2,435	$2,945

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 has 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) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The 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 2021–20–13, Amendment 39–21751 (86 FR 57033, October 14, 2021); and

■ b. Adding the following new Airworthiness Directive:

Bombardier, Inc.: Docket No. FAA–2023–2001; Project Identifier MCAI–2023–00666–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 11, 2023.

(b) Affected ADs

This AD replaces AD 2021–20–13, Amendment 39–21751 (86 FR 57033, October 14, 2021) (AD 2021–20–13).

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, serial numbers (S/N) 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6188 inclusive, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 32, Landing gear.

(e) Reason

This AD was prompted by reports of cracking of the main landing gear (MLG) shock strut lower pin. The FAA is issuing this AD to address cracking of the MLG shock strut lower pin. The unsafe condition, if not addressed, could result in structural failure of one or both MLG.

(f) Compliance

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

(g) Retained Repetitive Lubrication, With Revised Applicability

This paragraph restates the requirements of paragraph (g) of AD 2021–20–13, with revised applicability. Within 200 flight hours (FH) or 12 months after November 18, 2021 (the effective date of AD 2021–20–13), whichever occurs first, lubricate the left-hand (LH) and right-hand (RH) MLG shock strut lower pins having part number (P/N) 19146–3, in accordance with paragraph 2.B., ''Part A,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 200 FH or 12 months, whichever occurs first.

(1) For airplanes having S/N 5301 through 5665 inclusive: Bombardier Service Bulletin 604–32–030, dated June 30, 2020.

(2) For airplanes having S/N 5701 through 5988 inclusive: Bombardier Service Bulletin 605–32–007, dated June 30, 2020.

(3) For airplanes having S/N 6050 through 6188 inclusive: Bombardier Service Bulletin 650–32–004, dated June 30, 2020.

(h) Retained Detailed Visual Inspections (DVI), With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2021–20–13, with no changes. At the applicable compliance time specified in paragraphs (h)(1) through (3) of this AD, perform the DVI for cracking and damage of the LH and RH MLG shock strut lower pins having part number (P/N) 19146–3, in accordance with paragraph 2.C., ''Part B,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 400 FH or 24 months, whichever occurs first. If the DVI coincides with a non-destructive testing (NDT) inspection required by paragraph (i) of this AD, the NDT inspection supersedes the DVI for that interval only. If the accumulated flight cycles (FC) of the MLG shock strut lower pin are not known, use the related MLG assembly accumulated FC to determine when to accomplish the actions required by this paragraph.

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2021 (the effective date of AD 2021–20–13) and on which an MLG shock strut lower pin has accumulated fewer than 600 total FC on the pin as of November 18, 2021: Before the accumulation of 750 total FC on the pin.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2021 (the effective date of AD 2021–20–13) and on which an MLG shock strut lower pin has accumulated 600 total FC or more on the pin as of November 18, 2021: Within 150 FC after November 18, 2021.

(3) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 18, 2021 (the effective date of AD 2021–20–13): Before the accumulation of 750 total FC.

(i) Retained NDT Inspection, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2021–20–13, with no changes. At the applicable compliance time specified in paragraphs (i)(1) through (4) of this AD: Perform the NDT inspection for cracking and damage of the LH and RH MLG shock strut lower pins having P/N 19146–3, in accordance with paragraph 2.D., ''Part C,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 900 FC. If the accumulated FC of the MLG shock strut lower pin is not known, use the related MLG assembly accumulated FC to determine when to accomplish the actions required by this paragraph.

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2021 (the effective date of AD 2021–20–13) and on which an MLG shock strut lower pin has accumulated fewer than 1,200 total FC on the pin as of November 18, 2021: Before the accumulation of 1,500 total FC on the pin.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2021 (the effective date of AD 2021–20–13) and on which an MLG shock strut lower pin has accumulated 1,200 total FC or more but fewer than 2,000 total FC on the pin as of November 18, 2021: Within 300 FC after November 18, 2021, or before the accumulation of 2,200 total FC on the pin, whichever occurs first.

(3) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2021 (the effective date of AD 2021–20–13) and on which an MLG shock strut lower pin that has accumulated 2,000 total FC or more on the pin as of November 18, 2021: Within 200 FC after November 18, 2021.

(4) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 18, 2021 (the effective date of AD 2021–20–13): Before the accumulation of 1,500 total FC.

(j) Retained Replacement, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2021–20–13, with no changes. If, during any inspection required by this AD, any crack or damage of the MLG

shock strut lower pin is detected, before further flight, replace the affected MLG shock strut lower pin with a new part in accordance with paragraph 2.E., ''Part D,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD.

(k) New Requirement of This AD: Modification

Within 60 months from the effective date of this AD, modify the LH and RH MLG assembly in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (k)(1) through (3) of this AD.

(1) For airplanes having S/N 5301 through 5665 inclusive: Bombardier Service Bulletin 604–32–031, dated December 29, 2022.

(2) For airplanes having S/N 5701 through 5988 inclusive: Bombardier Service Bulletin 605–32–008, dated December 29, 2022.

(3) For airplanes having S/N 6050 through 6188 inclusive: Bombardier Service Bulletin 650–32–005, dated December 29, 2022.

(l) New Requirement of the AD: Testing

Before further flight after completing paragraph (k) of this AD, perform the testing of the MLG shock strut assembly to trailing arm assembly joint in accordance with paragraph 2.C. of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (k)(1) through (3) of this AD.

(m) Terminating Action

Modifying and testing an airplane as required by paragraphs (k) and (l) of this AD terminates the initial and repetitive lubrication and inspections required by paragraphs (g), (h), and (i) of this AD for that airplane.

(n) Additional AD Provisions

(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 (o)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *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 Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Additional Information

(1) Refer to Transport Canada AD CF–2023–32, dated May 9, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2001.

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Bombardier Service Bulletin 604–32–031, dated December 29, 2022.

(ii) Bombardier Service Bulletin 605–32–008, dated December 29, 2022.

(iii) Bombardier Service Bulletin 650–32–005, dated December 29, 2022.

(4) The following service information was approved for IBR on November 18, 2021 (86 FR 57033, October 14, 2021).

(i) Bombardier Service Bulletin 604–32–030, dated June 30, 2020.

(ii) Bombardier Service Bulletin 605–32–007, dated June 30, 2020.

(iii) Bombardier Service Bulletin 650–32–004, dated June 30, 2020.

(5) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

(7) 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 October 19, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–23516 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2040; Airspace Docket No. 22–AEA–21]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish three United States Area Navigation (RNAV) T-routes in the eastern United States. This action also proposes to amend one United States RNAV Q-route and amend five United States RNAV T-routes in the eastern United States. These actions support Next Generation Air Transportation System (NextGen) which provides a modern RNAV route structure to improve the efficiency of the National Airspace System (NAS).

DATES: Comments must be received on or before December 11, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0240 and Airspace Docket No. 22–AEA–21 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, 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: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

United States Area Navigation routes are published in paragraph 2006 and 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV routes T–480, T–482 and T–488, and amend RNAV routes Q–140, T–206, T–258, T–287, T–295, and T–398 in the eastern United States. This action supports NextGen which provides a modern RNAV route structure to improve the efficiency of the NAS. The proposed changes are described below.

Q–140: Q–140 currently extends between WOBED, WA, Waypoint (WP) and the YODAA, NY, WP. The FAA proposes to remove Computer Navigation Fixes (CNF) and replace them with pronounceable WPs. The RUBKI, MI, Fix is being moved 22 feet west of its current position to align with the United States (U.S.)/Canadian border and replaces the CFCTJ, MI, CNF. The RAGIX, NY, Fix is being moved 0.5 nautical miles (NM) east to align with the U.S./Canadian border and replaces the CFDHX, NY, CNF. In addition, the RODDY, NY, WP is being replaced with the TOTHH, NY, Fix due to similar sounding WP names. Additionally, the FAA proposes to remove fixes from the route's legal description for segments that are in Canada, and segments that contain turns of less than one degree. The following are the fixes that the FAA proposes to remove: GETNG, WA, WP; CORDU, ID, Fix; PETIY, MT, WP; CHOTE, MT, Fix; CESNA, WI, WP; WISCN, WI, WP; PEPLA, Canada, WP; SIKBO, Canada, WP; MEDAV, Canada, WP; HANKK, NY, Fix; BEEPS, NY, Fix; EXTOL, NY, Fix; MEMMS, NY, Fix; and KODEY, NY, Fix.

T–206: T–206 currently extends between the ENADE, NC, WP to the ZADEL, NC, WP. The FAA proposes to extend T–206 to the east between the ZADEL WP and the SNOWS, NC, Fix.

T–258: T–258 currently extends between the MINIM, AL, Fix and the GMINI, NC, WP. The FAA proposes to extend T–258 to the northeast between the GMINI WP and the BOUSY, VA, WP. Additionally, the FAA proposes to remove fixes from the route's legal description for segments that contain turns of less than one degree. The following are the fixes that the FAA proposes to remove: CAYAP, AL, Fix; ZIVMU, AL, Fix; DAYVS, AL, WP; HEENA, AL, Fix; KYLEE, AL, Fix; CAMPP, AL, Fix; and LANGA, GA, Fix.

T–287: T–287 currently extends between the DENNN, VA, WP and the TOMYD, MD, WP. The FAA proposes to extend T–287 to the southwest between the GMINI, NC, WP and the DENNN WP; and to the northeast between the TOMYD, MD, WP, and the Kennebunk, ME (ENE), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The FAA proposes to move the TOMYD, MD, WP 2.8 NM north of its current location and into the state of Pennsylvania. Moving the TOMYD WP would allow for T–287's alignment with future proposed RNAV routes. The amended route segment of T–287 would overlay a portion of VOR Federal airway V–44 between the PALEO, MD, WP to the WNSTN, NJ, WP; a portion of VOR Federal airway V–139 between MANTA,

NJ, Fix to the Kennebunk, ME (ENE), VOR/DME; and a portion of VOR Federal airway V–454 between the SNOWS, NC, Fix to the Lawrenceville, VA (LVL), VOR/Tactical Air Navigation (VORTAC). Additionally, the FAA proposes to remove fixes from the route's legal description for segments that contain turns of less than one degree. The following are the fixes that the FAA proposes to remove: DENNN, VA, WP; CAARY, VA, WP; and WILMY, VA, WP.

T–295: T–295 currently extends between the POORK, VA, Fix and the Presque Isle, ME (PQI), VOR/DME. The FAA proposes to extend T–295 to the southwest between the DUFFI, NC, Fix and the POORK Fix; and between the DOGWD, VA, Fix and the RIPKN, MD, WP to the route; and replace the Wilkes Barre, PA (LVZ) VOR/DME with the WLKES, PA, Fix. Additionally, the FAA proposes to remove the Chester, MA (CTR), VOR/DME from the route's legal description as those segments contain turns of less than one degree.

T–398: T–398 currently extends between the RRORY, TX, WP and the GMINI, NC, WP. The FAA proposes to extend T–398 to the northeast between the GMINI WP and the TAPPA, VA, Fix. The amended route segment of T–398 would overlay a portion of VOR Federal airway V–155 from the Sandhills, NC (SDZ), VORTAC to the MANGE, VA, Fix.

T–480: T–480 is a proposed new route that would extend between the Greensboro, NC (GSO), VORTAC to the ZOLMN, NC, Fix. T–480 would overlay a portion of VOR Federal airway V–266 from the Greensboro VORTAC to the South Boston, MA (SBV), VORTAC; and from the MAZON, VA, Fix to the Wright Brothers, NC (RBX), VOR/DME; and a portion of Colored Federal airway Green 13 (G–13) from the MANTEO, NC (MQI), Nondirectional Radio Beacon (NDB) to the ZOLMN, NC, Fix.

T–482: T–482 is a proposed new route that would extend between the MEYER, NC, Fix to the COUPN, VA, WP. T–482 would overlay a portion of VOR Federal airway V–615 from the MEYER Fix to the DUFFI, NC, Fix.

T–488: T–488 is a proposed new route that would extend between the Tar River, NC (TYI), VORTAC to the RTBRO, NC, Fix. T–488 would overlay a portion of VOR Federal airway V–189 from the Tar River VORTAC to the Wright Brothers, NC (RBX), VOR/DME.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–140 WOBED, WA to YODAA, NY [Amended]

WOBED, WA	WP	(lat. 48°36′01.07″ N, long. 122°49′46.52″ W)
LEWIT, MT	WP	(lat. 47°23′00.21″ N, long. 110°08′44.78″ W)
SAYOR, MT	FIX	(lat. 47°13′58.34″ N, long. 104°58′39.28″ W)
WILTN, ND	FIX	(lat. 47°04′58.09″ N, long. 100°47′43.84″ W)
TTAIL, MN	WP	(lat. 46°41′28.00″ N, long. 096°41′09.00″ W)
EEGEE, WI	WP	(lat. 45°08′53.00″ N, long. 088°45′58.00″ W)
DAYYY, MI	WP	(lat. 44°10′10.00″ N, long. 084°22′23.00″ W)
RUBKI, MI	FIX	(lat. 44°14′54.81″ N, long. 082°16′08.01″ W)
RAGIX, NY	FIX	(lat. 43°32′26.95″ N, long. 078°56′47.94″ W)
AHPAH, NY	WP	(lat. 43°18′19.00″ N, long. 078°07′35.11″ W)
ARRKK, NY	WP	(lat. 42°03′48.52″ N, long. 075°19′00.41″ W)
TOTHH, NY	FIX	(lat. 41°52′25.85″ N, long. 074°35′49.39″ W)
YODAA, NY	FIX	(lat. 41°43′21.19″ N, long. 074°01′52.76″ W)

Excluding the airspace within Canada.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–206 ENADE, NC to SNOWS, NC [Amended]

ENADE, NC	WP	(lat. 35°12′07.91″ N, long. 081°44′40.85″ W)
FADOS, NC	WP	(lat. 35°28′21.62″ N, long. 081°20′48.70″ W)
GOTHS, NC	WP	(lat. 35°35′17.41″ N, long. 080°58′25.43″ W)
ZADEL, NC	WP	(lat. 35°33′46.97″ N, long. 080°01′47.46″ W)
Liberty, NC (LIB)	VORTAC	(lat. 35°48′41.84″ N, long. 079°36′45.33″ W)
SNOWS, NC	FIX	(lat. 35°54′33.80″ N, long. 079°19′05.06″ W)

* * * * * * *

T–258 MINIM, AL to BOUSY, VA [Amended]

MINIM, AL	FIX	(lat. 33°32′31.14″ N, long. 088°02′23.62″ W)
CRMSN, AL	WP	(lat. 33°15′31.80″ N, long. 087°32′12.70″ W)
BRAVS, GA	WP	(lat. 33°02′56.44″ N, long. 085°12′22.93″ W)
CANER, GA	FIX	(lat. 32°45′21.48″ N, long. 084°35′51.42″ W)
SINCA, GA	FIX	(lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
HRTWL, SC	WP	(lat. 34°15′05.33″ N, long. 082°09′15.55″ W)
NATCH, NC	WP	(lat. 35°01′34.52″ N, long. 080°06′29.28″ W)
GMINI, NC	WP	(lat. 35°12′23.01″ N, long. 079°34′01.98″ W)
LANHO, NC	FIX	(lat. 35°31′13.87″ N, long. 078°49′11.96″ W)
ZEBUL, NC	FIX	(lat. 35°54′44.33″ N, long. 078°23′00.47″ W)
MEYER, NC	FIX	(lat. 36°12′49.33″ N, long. 078°04′36.13″ W)
BOUSY, VA	WP	(lat. 36°49′04.41″ N, long. 077°54′05.08″ W)

* * * * * * *

T–287 GMINI, NC to Kennebunk, ME (ENE) [Amended]

GMINI, NC	WP	(lat. 35°12′23.01″ N, long. 079°34′01.98″ W)
MMJAY, NC	WP	(lat. 35°21′31.36″ N, long. 079°31′57.51″ W)
SNOWS, NC	FIX	(lat. 35°54′33.80″ N, long. 079°19′05.06″ W)
OXFRD, NC	FIX	(lat. 36°25′13.02″ N, long. 078°35′20.30″ W)
BOUSY, NC	WP	(lat. 36°49′04.41″ N, long. 077°54′05.08″ W)
MANGE, VA	FIX	(lat. 37°01′27.74″ N, long. 077°43′43.08″ W)
Flat Rock, VA (FAK)	VORTAC	(lat. 37°31′42.63″ N, long. 077°49′41.59″ W)
Gordonsville, VA (GVE)	VORTAC	(lat. 38°00′48.96″ N, long. 078°09′10.90″ W)
KAIJE, VA	WP	(lat. 38°44′34.79″ N, long. 078°42′48.47″ W)
BAMMY, WV	WP	(lat. 39°24′33.13″ N, long. 078°25′45.64″ W)
REEES, PA	WP	(lat. 39°47′51.75″ N, long. 077°45′56.31″ W)
TOMYD, PA	WP	(lat. 39°43′39.02″ N, long. 077°07′58.89″ W)
DANII, MD	WP	(lat. 39°17′46.42″ N, long. 076°42′19.36″ W)
VYSOR, MD	FIX	(lat. 39°02′03.86″ N, long. 076°14′59.88″ W)
WNSTN, NJ	WP	(lat. 39°05′43.81″ N, long. 074°48′01.20″ W)
MANTA, NJ	FIX	(lat. 39°54′07.01″ N, long. 073°32′31.63″ W)
BEADS, NY	FIX	(lat. 40°44′04.51″ N, long. 072°32′34.21″ W)
ORCHA, NY	WP	(lat. 40°54′55.46″ N, long. 072°18′43.64″ W)
PARCH, NY	FIX	(lat. 41°05′57.22″ N, long. 072°07′14.66″ W)
Providence, RI (PVD)	VOR/DME	(lat. 41°43′27.63″ N, long. 071°25′46.71″ W)
INNDY, MA	FIX	(lat. 41°46′19.19″ N, long. 071°05′55.93″ W)
BURDY, MA	FIX	(lat. 41°57′19.14″ N, long. 070°57′07.45″ W)
HAVNS, OA	FIX	(lat. 42°17′55.00″ N, long. 070°27′42.00″ W)
GRGIO, MA	WP	(lat. 42°35′09.36″ N, long. 070°33′54.40″ W)
LBSTA, MA	FIX	(lat. 42°48′00.00″ N, long. 070°36′48.70″ W)
Kennebunk, ME (ENE)	VOR/DME	(lat. 43°25′32.42″ N, long. 070°36′48.69″ W)

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T–295 DUFFI, NC to Presque Isle, ME (PQI) [Amended]

DUFFI, NC	FIX	(lat. 36°20′57.87″ N, long. 077°47′29.22″ W)
POORK, VA	WP	(lat. 36°34′11.34″ N, long. 077°35′21.39″ W)
DOGWD, VA	FIX	(lat. 36°45′05.57″ N, long. 077°28′53.38″ W)
HOUKY, VA	WP	(lat. 37°19′55.98″ N, long. 077°07′57.63″ W)
TAPPA, VA	FIX	(lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
LOUIE, MD	FIX	(lat. 38°36′44.33″ N, long. 076°18′04.37″ W)
GRACO, MD	FIX	(lat. 38°56′29.81″ N, long. 076°11′59.22″ W)
RIPKN, MD	WP	(lat. 39°10′05.68″ N, long. 076°20′14.13″ W)
BAABS, MD	WP	(lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
Lancaster, PA (LRP)	VOR/DME	(lat. 40°07′11.91″ N, long. 076°17′28.66″ W)
WLKES, PA	FIX	(lat. 41°16′22.57″ N, long. 075°41′21.60″ W)
LAAYK, PA	FIX	(lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
SAGES, NY	FIX	(lat. 42°02′46.33″ N, long. 074°19′10.33″ W)
SASHA, MA	FIX	(lat. 42°07′58.70″ N, long. 073°08′55.39″ W)
KEYNN, NH	WP	(lat. 42°47′39.99″ N, long. 072°17′30.35″ W)
Concord, NH (CON)	VOR/DME	(lat. 43°13′11.23″ N, long. 071°34′31.63″ W)
Kennebunk, ME (ENE)	VOR/DME	(lat. 43°25′32.42″ N, long. 070°36′48.69″ W)
BRNNS, ME	FIX	(lat. 43°54′08.64″ N, long. 069°56′42.81″ W)
LAUDS, ME	WP	(lat. 45°25′10.13″ N, long. 068°12′26.96″ W)
HULTN, ME	WP	(lat. 46°02′22.29″ N, long. 067°50′02.06″ W)
Presque Isle, ME (PQI)	VOR/DME	(lat. 46°46′27.07″ N, long. 068°05′40.37″ W)

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T–398 RRORY, TX to TAPPA, VA [Amended]

RRORY, TX	WP	(lat. 33°32′14.95″ N, long. 096°14′03.45″ W)
MERIC, TX	WP	(lat. 33°11′54.97″ N, long. 095°32′32.66″ W)
SLOTH, TX	WP	(lat. 33°30′49.99″ N, long. 094°04′24.38″ W)
MUFRE, AR	FIX	(lat. 34°05′31.32″ N, long. 093°10′43.80″ W)
LITTR, AR	WP	(lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
EMEEY, AR	WP	(lat. 34°34′30.29″ N, long. 090°40′27.14″ W)
GOINS, MS	WP	(lat. 34°46′12.64″ N, long. 089°29′46.81″ W)
HAGIE, AL	WP	(lat. 34°42′25.87″ N, long. 087°29′29.76″ W)
FILUN, AL	WP	(lat. 34°47′50.14″ N, long. 086°38′01.14″ W)
JILIS, GA	WP	(lat. 34°57′23.98″ N, long. 085°08′03.46″ W)
CRAND, GA	WP	(lat. 34°57′28.88″ N, long. 084°51′20.59″ W)

BALNN, GA	WP	(lat. 34°56′34.20″ N, long. 083°54′56.42″ W)
BURGG, SC	WP	(lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
GAFFE, SC	WP	(lat. 35°05′38.90″ N, long. 081°33′23.92″ W)
CRLNA, NC	WP	(lat. 35°12′49.48″ N, long. 080°56′57.32″ W)
LOCAS, NC	FIX	(lat. 35°12′05.18″ N, long. 080°26′44.89″ W)
RELPY, NC	WP	(lat. 35°12′45.70″ N, long. 079°47′28.76″ W)
GMINI, NC	WP	(lat. 35°12′23.01″ N, long. 079°34′01.98″ W)
JIMYV, NC	WP	(lat. 35°24′52.67″ N, long. 079°17′16.76″ W)
ACUTE, NC	FIX	(lat. 35°36′35.10″ N, long. 079°03′53.81″ W)
Raleigh/Durham, NC (RDU)	VORTAC	(lat. 35°52′21.08″ N, long. 078°47′00.03″ W)
BOUSY, VA	WP	(lat. 36°49′04.41″ N, long. 077°54′05.08″ W)
THHMP, VA	WP	(lat. 37°29′29.47″ N, long. 077°19′08.75″ W)
SVILL, VA	FIX	(lat. 37°47′11.11″ N, long. 077°01′56.89″ W)
TAPPA, VA	FIX	(lat. 37°58′12.66″ N, long. 076°50′40.62″ W)

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T–480 Greensboro, NC (GSO) to ZOLMN, NC [New]

Greensboro, NC (GSO)	VORTAC	(lat. 36°02′44.49″ N, long. 079°58′34.94″ W)
MCDON, VA	WP	(lat. 36°40′29.56″ N, long. 079°00′52.03″ W)
MAZON, VA	FIX	(lat. 36°45′23.24″ N, long. 077°22′02.91″ W)
COUPN, VA	WP	(lat. 36°42′50.83″ N, long. 077°00′44.04″ W)
Elizabeth City, NC (ECG)	VOR/DME	(lat. 36°15′27.26″ N, long. 076°10′32.15″ W)
RTBRO, NC	FIX	(lat. 35°55′13.85″ N, long. 075°41′49.05″ W)
ZOLMN, NC	FIX	(lat. 35°38′42.35″ N, long. 075°24′27.41″ W)

T–482 MEYER, NC to COUPN, VA [New]

MEYER, NC	FIX	(lat. 36°12′49.33″ N, long. 078°04′36.13″ W)
COUPN, VA	WP	(lat. 36°42′50.83″ N, long. 077°00′44.04″ W)

T–488 TAR RIVER NC (TYI) to RTBRO, NC [New]

Tar River, NC (TYI)	VORTAC	(lat. 35°58′36.21″ N, long. 077°42′13.43″ W)
RTBRO, NC	FIX	(lat. 35°55′13.85″ N, long. 075°41′49.05″ W)

* * * * *

Issued in Washington, DC, on October 19, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–23479 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1408

[CPSC Docket No. CPSC–2019–0020]

Safety Standard for Residential Gas Furnaces and Boilers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking; notice of opportunity for oral presentation of comments.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined preliminarily that there is an unreasonable risk of injury and death associated with residential gas fired central furnaces, boilers, wall furnaces, and floor furnaces (gas furnaces and boilers). To address this risk, the Commission proposes a rule to detect and prevent dangerous levels of carbon monoxide (CO) production and leakage from residential gas furnaces and boilers. The Commission is providing an opportunity for interested parties to present written and oral comments on this notice of proposed rulemaking (NPR).

DATES: *Deadline for Written Comments:* Written comments must be received by December 26, 2023.

Deadline for Request to Present Oral Comments: Any person interested in making an oral presentation must send an email indicating this intent to the Office of the Secretary at *cpsc-os@cpsc.gov* by December 26, 2023.

ADDRESSES:

Written Comments: Comments related to the Paperwork Reduction Act aspects of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other written comments in response to the proposed rule, identified by Docket No. CPSC–2019–0020, may be submitted by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, courier, or you may email them to: *cpsc-os@cpsc.gov*.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided to: *www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket for NPR: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* insert the docket number CPSC–2019–0020 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Ronald A. Jordan, Directorate for Engineering Sciences, Mechanical

Engineering, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2219; *rjordan@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 19, 2019, the Commission published an advance notice of proposed rulemaking (ANPR) to develop a rule to address the risk of injury associated with residential gas furnaces and boilers from CO production and leakage. 84 FR 42847. The Commission received 15 comments. The Commission is now proceeding with this proposed rulemaking.[1] The information discussed in this preamble is derived from CPSC the Staff Briefing Package for the NPR, which is available on CPSC's website at: *https://www.cpsc.gov/s3fs-public/Notice-of-Proposed-Rulemaking-Safety-Standard-for-Residential-Gas-Furnaces-and-Boilers-COMBINED-PDFS.pdf?VersionId=7BJ3c6EeDF78nHorx2mCEr94XygwgeQV.*

II. Statutory Authority

This rulemaking falls under the authority of the CPSA, (Consumer Product Safety Act) 15 U.S.C. 2051–2089. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product, if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA. In accordance with section 9, the Commission commenced this rulemaking by issuing an ANPR.

According to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, on the following issues:

(A) The degree and nature of the risk of injury that the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes of product, subject to the rule;

(C) the need of the public for the products subject to the rule and the probable effect the rule will have on utility, cost, or availability of such products; and

(D) the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices consistent with public health and safety.

15 U.S.C. 2058(f)(1).

Under section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product'' and that issuing the rule is in the public interest. 15 U.S.C. 2058(f)(3)(A) and (B). Additionally, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that:

- The voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or
- substantial compliance with the voluntary standard is unlikely.

15 U.S.C. 2058(f)(3)(D). The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. 15 U.S.C. 2058(f)(3)(E) and (F).

III. The Product

Central furnaces, boilers, wall furnaces, and floor furnaces fueled by natural gas or propane (gas furnaces and boilers) are used to heat all categories of consumer dwellings. These products burn a mixture of gas and air within the combustion chamber of a heat exchanger. As the mixture of fuel and air is burned, heat is released and transferred through the wall of the heat exchanger to the medium surrounding the heat exchanger and circulated through air ducts (for central furnaces), water pipes throughout the dwelling (for boilers), or directly into the ambient air to provide heat (for wall furnaces and floor furnaces).

Burning the mixture of fuel and air results in the formation of combustion products that are typically composed of oxygen, carbon dioxide, water vapor, and CO. The combustion products are exhausted to the outdoors through a vent system, either vertically through the roof or horizontally through a side wall through the vent pipe. When the mixture of fuel and air is burned completely, the concentration of CO produced should remain relatively low. However, when issues arise with the combustion process (such as fuel-air mixtures that are not optimal), dangerous levels of CO can be produced. The combination of production of dangerous levels of CO during the combustion process and leakage of that CO through the vent system into the living space is a potentially deadly hazard pattern identified by CPSC staff.

In a gas-fired central furnace (Figure 1), air is the medium that surrounds and is heated by the heat exchanger. A large fan is used to force-circulate the heated air across the exterior surfaces of the heat exchanger, through a duct system, and then the heated air exits the duct system through warm air registers typically within the dwelling. The arrow in Figure 1 depicts the vent pipe.

In a gas boiler (Figure 2), water or steam is the medium that surrounds and is heated by the heat exchanger. The heated water or steam is circulated, using a pump to force the fluid through a piping system to radiators typically in each room in the dwelling. Living areas are heated through radiative and conductive heat transfer from the heated water or steam supplied to the radiators to the room. Gas-fired central furnaces and boilers are considered central heating appliances because they provide heat to each room of a dwelling. The arrow in Figure 2 points to the boiler's vent pipe.

[1] The Commission voted (4–0) to publish this notice of proposed rulemaking as drafted. Commissioner Feldman issued a statement in connection with his vote, available at: *https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-Infant-Rockers-NPR-and-Gas-Furnaces-and-Boilers-NPR.pdf?VersionId=8Ct.NBI7RhSXyozTJBE65q3lCSyU_aMl.*

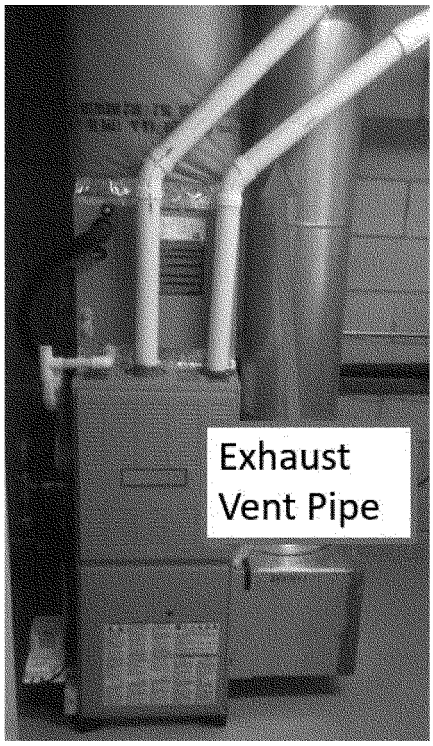


Figure 1. Gas-fired central furnace

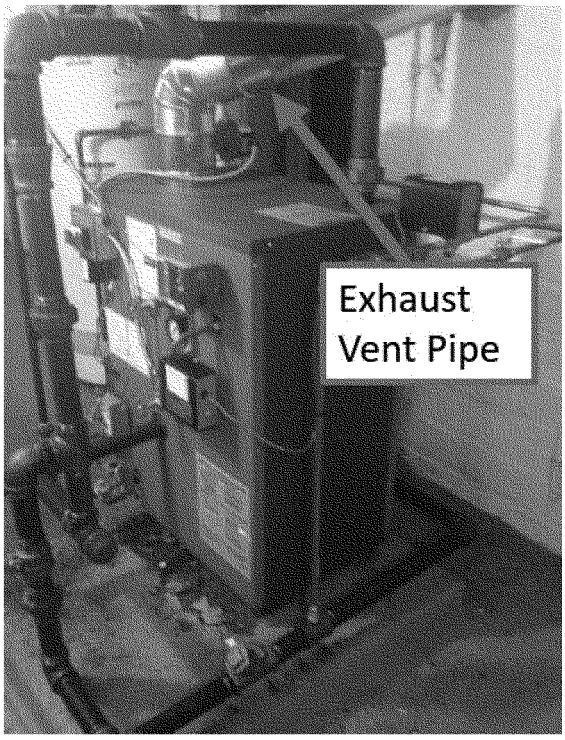
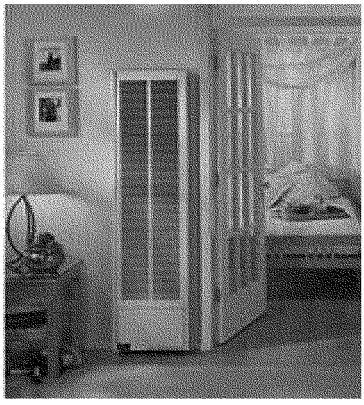


Figure 2. Gas boiler

In addition to central gas-fired furnaces and boilers, the proposed scope of the NPR also includes gas wall furnaces (Figure 3) and gas floor furnaces (Figure 4). As their names indicate, gas wall furnaces are installed in wall spaces, typically between the wall stud framing members; and floor furnaces are installed in the floor, typically between the floor joist framing members. Wall furnaces and floor furnaces provide localized heating directly to the room in which they are located, and indirectly to adjoining rooms within the dwelling. The combustion products of wall furnaces are vented to the outdoors, either vertically through the roof, or horizontally through a side wall with the vent pipe running along the length of the wall studs between which the unit is installed. The combustion products of a floor furnace are typically vented horizontally through a side wall, with the vent pipe running along the length of the floor joists between which the unit is installed and through an exterior wall.



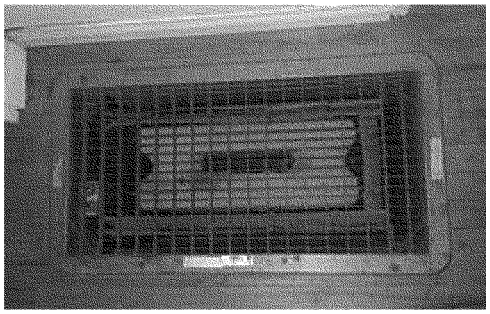


Figure 3. Gas wall furnace Figure 4. Gas floor furnace

IV. Risk of Injury

A. Incident Data

1. Fatalities

From the time period of 2017 to 2019 (the most recent period for which data are complete), there were annually an estimated 21 CO-related deaths associated with gas furnaces and boilers (burning liquefied petroleum, natural gas, and unspecified gas).[2] For the 20-year period, 2000 through 2019, these products were associated with a total of 539 deaths from CO poisoning. Tab A of the Staff NPR Briefing Package provides further information regarding fatalities.

2. Injury Estimates

To estimate the number of injuries associated with CO exposure from natural gas and propane furnaces and boilers, an interdisciplinary team of CPSC staff evaluated injuries reported through the National Electronic Injury Surveillance System (NEISS) (*See* Tab J of the Staff NPR Briefing Package). Staff queried NEISS for data between the years 2014 and 2018. Staff identified 236 nonfatal injuries related to CO leakages from gas furnaces and boilers that occurred during this period. Of the 236 nonfatal injuries, 18 resulted in hospital admissions via the emergency department (ED), and 218 were treated in the ED and released. Staff used NEISS incidents and the Injury Cost Model (ICM) to extrapolate and generate national estimates for injuries from CO leakages from gas furnaces and boilers treated in EDs and other settings. Staff, using the ICM, calculated that the aggregate number of nonfatal injuries from CO leakages from gas furnaces and boilers from 2014 to 2018 was 30,587. Staff estimated that of the 30,587 injuries, 22,817 were treated in an outpatient setting (*e.g.,* doctor's office, or clinic), 7,358 resulted in ED treatment, 333 resulted in hospital admissions via the ED, and 79 resulted in direct hospital admissions.

B. Description of Hazard—Acute CO Poisoning

In Tab C of the Staff ANPR Briefing Package[3] staff described the hazard pattern for CO poisoning associated with gas furnaces and boilers; which involves (1) hazardous levels of CO from incomplete combustion of the source fuel/gas and (2) exhaust leakage of that hazardous CO into the living space through a leak in the exhaust vent system. Staff's review of the 83 incidents, in conjunction with findings from earlier in-depth investigation (IDI) reviews, identified the following factors related to the incomplete combustion and exhaust leakage hazard patterns.

1. Production of Dangerous Levels of CO From Incomplete Combustion

Complete combustion of hydrocarbon fuels, such as natural gas or liquefied petroleum gas (LP-gas or propane), requires a proper mixture of air and fuel, as well as an adequate amount of heat to ignite the combustion air-fuel mixture. Incomplete combustion of the fuel supplied to gas appliances can lead to production of hazardous levels of CO. Incomplete combustion can occur when there is inadequate combustion of air (for instance when air openings to the appliance combustion chamber or burner assembly, or the exhaust outlet from the appliance is blocked); too much fuel is supplied to the appliance burner (*i.e.,* over-firing); or the burner flame temperature falls below the ignition temperature of the combustion air-fuel mixture (*i.e.,* flame quenching). Depending on the severity and duration, all these conditions can result in incomplete combustion of the fuel; which, in turn, can result in the gas furnace or boiler producing dangerous levels of CO. Staff's ongoing review of IDIs confirms that these hazard patterns have not changed since the publication of the ANPR.

2. Exhaust Leakage

Combustion products produced by a gas furnace or boiler are normally vented to remove them from the home through a properly functioning vent system. A potential CO hazard in a home can arise if the combustion system of a gas furnace or boiler malfunctions and produces hazardous levels of CO, which a compromised exhaust system then allows to leak into the occupied space of the home. Typical exhaust failure leakage paths include a totally or partially blocked vent, chimney, heat exchanger, or a disconnected or hole in the vent pipe.

Another potential leakage mechanism occurs when an exhaust fan or fireplace is installed near a gas furnace or boiler. The operation of an exhaust fan or a warm chimney created by a fireplace can pull air out of the room in which the gas furnace or boiler is installed. This can depressurize the room, resulting in reverse flow of the combustion products through the gas furnace or boiler vent system or flue passageways. Instead of being vented safely to the outdoors, depressurization can cause CO to spill into the living space. Other mechanisms that can lead to spillage include venting that is inadequate for the gas furnace or boiler connected to it. This can be caused by total or partial vent blockage, installation of a vent pipe that is too small for the gas furnace or boiler, or the connection of too many appliances to the vent.

V. Assessment of Relevant Existing Voluntary Standards

A. U.S. Voluntary Standards

1. Description of Existing U.S. Voluntary Standards for Gas Furnaces and Boilers

In the United States, the four types of gas furnaces and boilers within the scope of the proposed rule are covered by the following ANSI Z21 voluntary standards:

- ANSI Z21.13–2022, *Standard for Gas-fired low pressure steam and hot water boilers:* This standard specifies construction and performance requirements for gas-fired, low-pressure steam and hot water boilers with input ratings of less than 12,500,000 Btu/hr (3,663 kW). The first edition of the standard was published in 1934, and the standard has been revised several times, with the latest edition published in 2022.
- ANSI Z21.47–2021, *Standard for Gas-fired central furnaces:* This standard specifies construction and performance requirements for gas-fired central furnaces with input ratings up to and including 400,000 Btu/hr (117 kW) for installation in residential, commercial, and industrial structures including furnaces for direct vent, recreational vehicle, outdoor, and manufactured (mobile) homes. The requirements for gas-fired central furnaces were initially included in ANSI Z21.13, before becoming a separate standard in 1964. From 1978 through 1993, a separate standard for direct vent central furnaces (ANSI Z21.64) was in place before being consolidated into a single standard and harmonized with Canadian standard requirements in 1993, with the latest edition of ANSI Z21.47 published in 2021.
- ANSI Z21.86–2016, *Standard for Vented gas-fired space heating*

[2] *Non-Fire Carbon Monoxide Deaths Associated with the Use of Consumer Products 2019 Annual Estimates.* J. Topping. CPSC Directorate for Epidemiology. March 2023. *https://www.cpsc.gov/s3fs-public/NonFireCarbonMonoxideDeathsAssociatedwiththeUseofConsumerProducts2019AnnualEstimates.pdf?VersionId=90WCZoH61aVUrTgDtOo16LLKZf1EeH3E.*

[3] Draft Advance Notice of Proposed Rulemaking: Performance Requirements for Residential Gas Furnaces and Boilers. Retrieved at: *https://cpsc.gov/s3fs-public/Draft%20ANPR%20-%20Performance%20Requirements%20for%20Residential%20Gas%20Furnaces%20and%20Boilers.pdf.*

appliances: This standard specifies construction and performance requirements for vented gas-fired space heating appliances with input ratings up to and including 400,000 Btu/hr (117 kW), including gravity and fan type direct-vent wall furnaces and gravity and fan-type floor furnaces. The ANSI Z21.86 standard was first published in 1998, with the latest edition published in 2016.

All three ANSI standards have the following relevant requirements for gas furnaces and boilers:

- must not produce CO in excess of 400 ppm (under prescribed laboratory test conditions);
- shut off when vent or flue is fully blocked;
- shut off when blower door is not sealed properly (gas-fired central furnaces only); and
- shut off if flames issue outside of the burner compartment.

2. CPSC Voluntary Standards Activity

In 2000, CPSC staff proposed voluntary standard provisions that would require a gas furnace (ANSI Z21/83 Technical Committee subsequently extended the consideration of the proposed standards provisions to all vented heating appliances including boilers):

- to shut down if the vent pipe became disconnected; and
- to shut down if the vent pipe became totally or partially blocked; or
- to have a means to prevent CO emissions from exceeding the standard limits once installed in the field; and
- to have a means, once installed in the field, to shut down if CO emissions exceeded the standard limits.

In 2002, the ANSI Z21/83 Technical Committee (TC) established a working group to evaluate the feasibility of using CO and combustion sensor technology to implement CPSC staff's CO shutoff/response proposal. CPSC staff participated in that working group from 2002 through 2005. ANSI disbanded this working group in 2005 because manufacturers expressed concerns that there were no sensors commercially available that had the durability or longevity to operate within a gas furnace or boiler for their expected 20-year lifespan. CPSC staff conducted additional sensor testing from 2007 to 2008 to evaluate and assess the ANSI ZS21/83 TC's and working group's concerns.

In 2014, the Commission published a request for information (79 FR 21442) and hosted a Carbon Monoxide/Combustion Sensor Forum to gather more information on the availability and feasibility of CO and combustion sensors for use in gas furnaces and boilers.

In 2015, the Z21/83 TC established another working group to evaluate a new CPSC staff proposal to add performance requirements for CO Shutoff/Reponses to the voluntary standards for gas-fired central furnaces and, boilers, wall furnaces, and floor furnaces. The Z21/83 Technical Committee assessed that the technology required to meet the performance requirements was not feasible. The working group disbanded in 2019 without proposing any revisions to the voluntary standard that would adequately mitigate the CO hazard associated with gas furnaces and boilers.

In Tab D of the 2019 Staff ANPR Briefing Package, staff analyzed the three ANSI voluntary standards and concluded that none of the existing voluntary standards included requirements to protect against many of the known failure modes or conditions that have been associated with production and leakage of CO into living spaces. Since publication of the ANPR in August 2019, none of the existing ANSI voluntary standards discussed above have been revised to address the known failure modes or conditions associated with CO poisoning, such as disconnection, breach, or partial blocking of flues, vents, and chimneys.

B. International Standards

Existing Japanese and European gas appliance voluntary standards include CO shutoff or combustion control [4] requirements, with reliance on gas sensing technologies to implement those standards' requirements.

1. Japan

The primary gas heating appliances used in Japan are gas water heaters, gas boilers, and gas space heaters. Based on staff's review of the Japanese gas appliance market, instantaneous tankless gas water heaters [5] (Figure 6) are more common than traditional gas water heaters with storage tanks.

[4] Combustion control refers to a means to control the combustion of a gas/air mixture to ensure complete combustion of the gas/air mixture and to limit the production of carbon monoxide.

[5] Instantaneous tankless gas water heaters provide heated water on demand and therefore, do not require the use of a large storage tank, whereas traditional gas storage water heaters include a large storage tank used to store heated water.

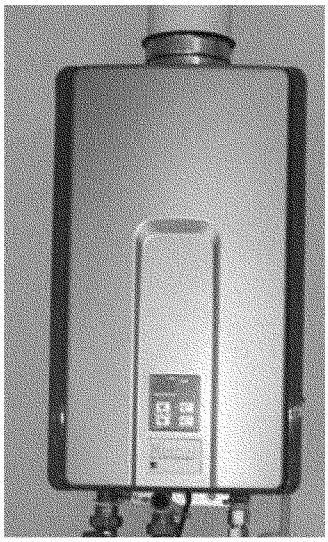


Figure 6. Japanese tankless gas water heater

The governing voluntary performance and safety standards in Japan are:

- JIS–S–2109—Gas-burning water heaters for domestic use;
- JIS S 2112—Gas hydronic [6] heating appliances for domestic use; and
- JIS S 2122—Gas-burning space heaters for domestic use.

These Japanese Industrial Standards (JIS) have explicit performance requirements for vented gas water heaters, gas boilers, and gas space heaters that require shutoff of the appliance in response to CO levels above a certain threshold (*i.e.,* 300 ppm CO). The CO detection strategies Japanese manufacturers use to comply with JIS include detection of CO within the combustion chamber of the appliance and shutoff or combustion control in response to detection of hazardous levels of CO.

2. Europe

The relevant Committee for European Standardization (CEN) standards for residential gas boilers (depicted in Figure 7 below) are:

- EN 15502–1, Gas-fired heating boilers, Part 1: General requirements and tests;
- EN 15502–2–1, Gas-fired central heating boilers, Part 2–1: Specific standard for type C appliances and type B2, B3 and B5 appliances of a nominal heat input not exceeding 1 000 kW; and
- EN 15502–2–2, Gas-fired central heating boilers, Part 2–2: Specific standard for type B1 appliances.

[6] ''Hydronic'' denotes a cooling or heating system in which heat is transported using circulating water. A boiler is a type of appliance that provides this capability.

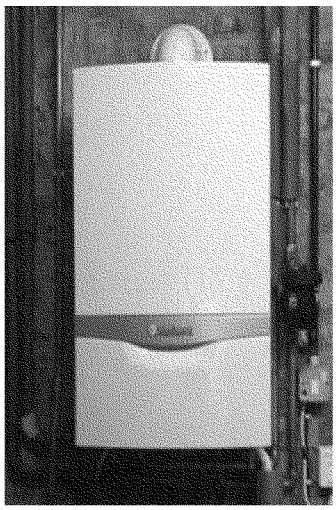


Figure 7. European gas boiler

These CEN standards include explicit performance requirements for gas boilers to either shut down before the CO concentration inside the flue exceeds 2,000 ppm or not start if the CO concentration exceeds 1,000 ppm.

C. Staff Assessment of Voluntary Standards

Based on staff's analysis of the relevant ANSI standards, staff concludes that the current ANSI Z21.13–2022, ANSI Z21.47–2021, and ANSI Z21.86–2016 standards do not contain performance requirements to protect against the known failure modes or conditions identified by the Commission. Specifically, the current ANSI standards lack requirements (1) that protect against known conditions that cause or contribute to CO exposure and (2) for the appliance to monitor and manage CO production to prevent the introduction of hazardous levels of CO in the appliance's exhaust vent system. Currently, deaths and injuries can and do occur from CO poisoning even when the furnace or boiler complies with all applicable existing voluntary standards in the U.S. Based on the above discussion and the analysis in the Staff NPR Briefing Package, the Commission concludes that the existing ANSI standards for gas furnaces and boilers are inadequate to address the hazards identified by CPSC.

In addition, staff has researched international standards that required the same or similar performance requirements as staff's 2000 and 2015 proposals to the Z21/83 Technical Committee. Staff identified several gas-sensing technologies that were being used for CO shutoff or combustion control of residential gas appliances used in Japan and Europe to correspond with the respective standards. The CO-detection strategies used by Japanese manufacturers include detection of CO within the combustion chamber of the appliance and shutoff or combustion control in response.

In Europe, residential gas boilers are required to meet certain European combustion-efficiency requirements, as well as CO safety requirements. The combustion-control strategies used by European gas boiler manufacturers to comply with the standards are often accomplished by monitoring the gas/air mixture, the combustion flame, or the concentration of CO, oxygen, or carbon dioxide within the combustion products. The combustion-control strategies are also used to detect CO, but rather than causing shut-down of the

appliance, CO production is either prevented or limited by modulating the appliance's operation. The Japanese and European standards do not specify a minimum lifespan for sensing devices used to implement their respective CO safety and combustion efficiency requirements. However, adoption of the European and Japanese standards for U.S. gas furnaces and boilers would not be appropriate because of the design differences between European and Japanese products and U.S. gas furnaces and boilers, as well as the different regulations and standards requirements (other than CO safety related requirements) that European and Japanese appliances are required to comply with that would not apply to appliances made and sold in the U.S.

VI. Technical Justification for the Proposed Performance Requirements

A. Testing and Evaluation Conducted by Contractors

Tab C of the Staff NPR Briefing Package includes links to the contractor reports regarding the research and testing conducted to assist in developing staff's proposed mandatory performance requirements. In 2019, a CPSC contract was awarded to Guidehouse (formerly Navigant, Inc.) to study the impact of CO/combustion sensors used in residential gas boilers and water heaters in Europe and Japan and to gain a better understanding of the use of CO sensors in gas appliances in other parts of the world and their impact in mitigating CO risks associated with gas appliances. This contract work was also was commissioned to assess industry concerns about the feasibility of using sensors in the exhaust flue of gas furnaces and boilers. Work on this contract concluded in 2021 and the findings are documented in a contractor report titled, ''Review of Combustion Control and Carbon Monoxide Sensors in Europe and Japan,'' dated June 28, 2021. The Guidehouse report is included as attachment 3 of Tab C of the staff NPR Briefing Package.

The Guidehouse report found that in Europe, gas appliance safety is governed by European Union (EU) Regulation 2016/426 on appliances burning gaseous fuels, and compliance with the applicable standard published by the CEN is generally considered a means to demonstrate compliance with the regulation. In Japan, the Gas Business Act and the Act on the Securing of Safety and the Optimization of Transaction of Liquefied Petroleum Gas require that a manufacturer or importer ensure that the gas-fired equipment conforms to the technical standards established by an Ordinance of the Ministry of Economy, Trade and Industry (METI). European and Japanese manufacturers limit CO production with combustion safety systems, combustion control systems, direct CO sensing in the exhaust path, or a combination of these approaches. The available data revealed that CO deaths and injuries in the EU and Japan were declining. However, the Guidehouse report noted that additional factors, such as other CO alarm usage and education and market changes, likely played a role in these reductions of CO deaths and injuries as well.

The Guidehouse report also found the designs used in U.S. residential heating and water heating appliances differ significantly from those used in Japan and Europe. In Europe and Japan, gas boilers are commonly used for space heating and the market has transitioned almost entirely to condensing systems that utilize premix power burners. The Guidehouse report also found that appliances with design platforms based on premix power burners are better suited to incorporate combustion control because they typically have a single burner, a single heat exchanger cell, and a single flame ionization sensor to monitor the burner flame.

CPSC also procured two contracts with ANSYS, Inc. (formerly DfR Solutions, Inc.) to estimate the expected lifespans of CO/combustion sensors while operating in a gas furnace or boiler application. The report titled ''Performance and Accelerated Life Testing of Carbon Monoxide and Combustion Sensors,'' dated May 28, 2019, is included as attachment 1 of Tab C of the Staff NPR Briefing Package. The report titled ''Performance and Accelerated Life Testing of Redesigned Carbon Monoxide and Combustion Gas Sensors,'' dated February 25, 2022, is included as attachment 2 of Tab C of the Staff NPR Briefing Package. The ANSYS report demonstrated that CO/combustion sensors are currently commercially available for use in gas appliances; the CO/combustion sensors that were tested had expected lifespans ranging from 6.4 to 10 years operating under conditions that replicate the main stress conditions expected within a gas appliance.

B. Justification for Proposed Performance Requirements

The proposed performance requirements are reasonably necessary and feasible for the following reasons:

- The gas furnaces and boilers under consideration are associated with an estimated 21 deaths per year, on average (2017–2019), and an estimated total of 539 CO deaths from 2000 to 2019;
- the existing voluntary standards do not include provisions that would protect consumers from a number of conditions described in section IV of the preamble that are known to cause or contribute to the production, leakage into, and accumulation of dangerous concentrations of CO in the living space of a dwelling;
- there is no indication that the Z21/83 Technical Committee or any of the technical Subcommittees for gas furnaces and boilers intend to address this hazard; and
- continuous monitoring of the combustion process or the concentration of carbon monoxide within the combustion gases can be accomplished using commercially available CO/combustion sensing or combustion control technology.

The proposed performance requirements described in this section of the preamble are intended to reduce the occurrence of CO-related deaths, injuries, and exposures associated with gas furnaces and boilers. Specifically, gas furnaces and boilers would continuously monitor CO emissions and shut down or modulate combustion if any of the average CO ranges specified in Table 1 [7] are detected in the gas furnaces and boilers flue gases for the durations listed.

TABLE 1—CO RANGES AND DURATIONS FOR SHUT-DOWN OR MODULATION

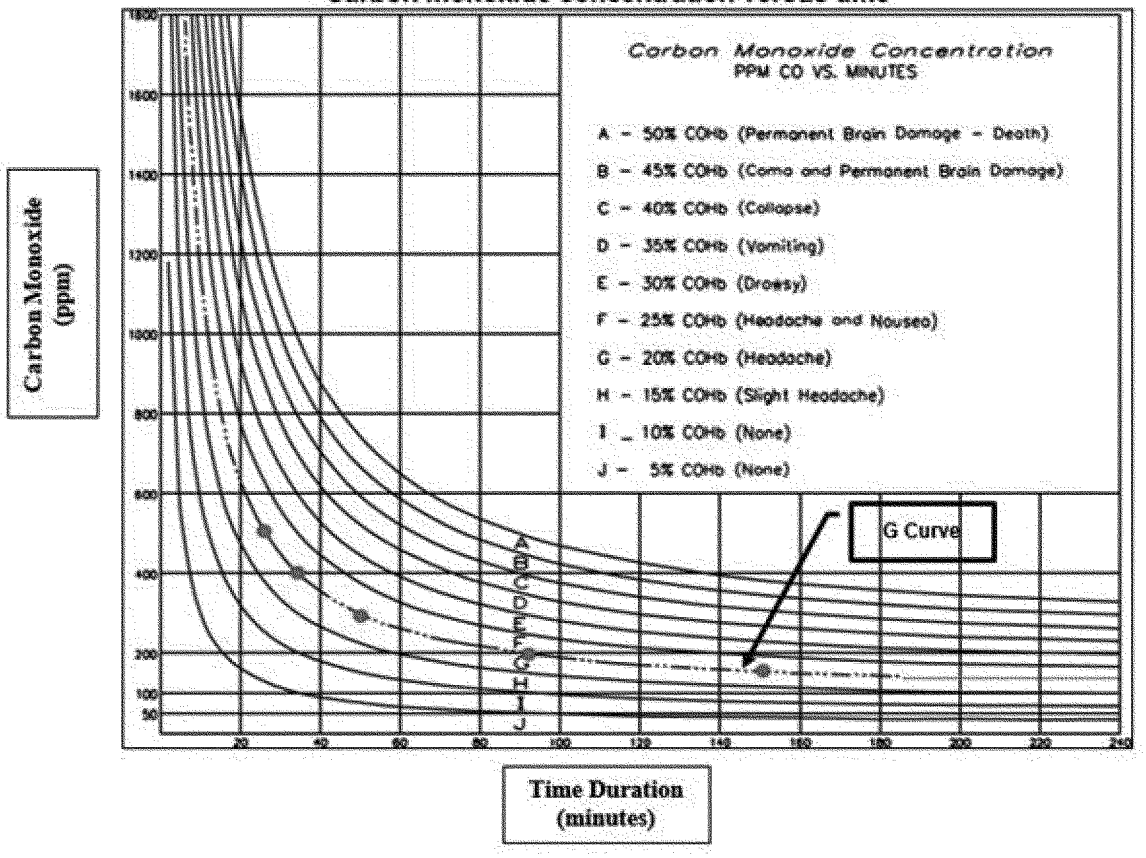
Average CO (ppm)	Duration (minutes)
500 or above	15
400–499	30
300–399	40
200–299	50
150–199	60

The average CO ranges in Table 1 are the proposed setpoints and durations at which a gas furnace or boiler must either shut down or begin modulation. These CO ranges are based on Curve G of the CO Concentration vs. Time graph

[7] The proposed CO range setpoints and durations reflected in Table 1 are derived from UL 2034, Standard for Safety Single and Multiple Station Carbon Monoxide Alarms, 4th Edition, (2017), the voluntary standard for in-home carbon monoxide alarms. UL 2034 provides requirements for electrically operated single and multi-station CO alarms intended for protection in ordinary indoor locations of dwelling units. Section 41.1 of UL 2034 provides the levels at which a carbon monoxide alarm must trigger. Section 1.2 of UL 2034 covers carbon monoxide alarms intended to respond to the presence of carbon monoxide from various sources, including the abnormal operation of fuel-fired appliances.

(Figure 41.1 from UL 2034) in Figure 8 which indicates what an individual's carboxyhemoglobin (COHb) levels would be if exposed to various CO concentrations and the time of exposure needed to reach that COHb level. Curve G represents a 20 percent COHb level and the onset of health effects in individuals (*i.e.,* a headache). The values on the y-axis represent CO exposure levels in parts per million (ppm) from zero ppm CO to 1,800 ppm CO. The values on the x-axis represents the time durations (in minutes) of exposure to the CO concentrations presented on the y-axis. The curves A through J on the graph represent the various carboxyhemoglobin levels an individual can reach when exposed to CO (y-axis) over a period of time (x-axis).

Figure 8 (Based on Figure 41.1 in UL 2034)
Carbon monoxide concentration versus time



To interpret the graph in Figure 8, begin at a given CO concentration on the y-axis and extend a horizontal line to the right until the line intersects a COHb curve. At the point of intersection, extend a vertical line downwards to the x-axis. The time value at this point of intersection represents the amount of time, at the selected CO concentration, at which an individual would reach a certain COHb level. For example, at a 400 ppm CO concentration, it would take approximately 35 minutes for an individual to reach a COHb of 20 percent. At a CO concentration of 300 ppm, it would take approximately 50 minutes to reach a COHb of 20 percent. The dots on the graph in Figure 8 illustrate that the entire proposed CO response range (*i.e.,* 150–400 and above) all fall on Curve G. A performance requirement that requires shutdown or modulation of a gas furnace or boiler at this range of CO levels provides protection to consumers from the onset of the more serious CO-related health effects, such as vomiting, coma, and death. The proposed performance requirement for the range and time period for CO exposure is consistent with the existing UL 2034 standard for consumer carbon monoxide alarms, which uses similar requirements to protect consumers from CO exposure in the home.

Manufacturers may comply with the performance requirements under the proposed rule by using an option for either shut down or modulation of the gas furnace or boiler if the average CO level reaches 150 ppm over a 15-minute duration. This option simplifies the performance requirement to a single CO setpoint rather than multiple setpoints as described above. It provides the same level of protection as the multiple setpoint approach described above because the gas furnace or boiler would be required to shut down or modulate at the lowest threshold of CO production (150 ppm) that can result in low-level health effects (*i.e.,* headache per the 20 percent COHb curve). The shorter time duration (15 minutes) is protective at higher CO concentrations of 200 ppm or more that can begin to cause the onset of health effects (*i.e.,* a headache per the 20 percent COHb curve).

The proposed performance requirements described in section VIII of the preamble are also based, in part on, on the definitions and performance requirements in ANSI Z21.47, *Standard for Gas-fired central furnaces;* ANSI Z21.13, *Standard for Gas-fired low pressure steam and hot water boilers,* and ANSI Z21.86, *Standard for Vented gas-fired space heating appliances,* as

well as performance requirements from CEN [8] [9] standards for domestic gas boilers, and CEN standards for safety and control devices for gas appliances [10] [11] and gas/air ratio controls for gas appliances,[12] and JIS standard for domestic gas water heaters, boilers and space heaters.[13] [14] [15] The CEN and JIS standards were given weight when developing the proposed performance requirements because the provisions in these standards are similar to the proposed performance requirements for gas furnaces and boilers in this NPR and are readily applicable to U.S. gas furnaces and boilers. In addition, although there are significant differences between the design platforms of European and Japanese gas boilers (*i.e.,* predominantly premix power burner designs) and U.S. gas furnaces and boilers (*i.e.,* predominantly induced draft and some atmospheric vent designs), the basic operating environment parameters (*e.g.,* temperature, humidity, and combustion gases) within the heat exchangers and flues of European and Japanese gas boilers and U.S. gas furnaces and boilers are similar. The European and Japanese circumstances demonstrate the commercial availability of CO/combustion sensors and combustion controls that: (1) provide CO/combustion sensor-based shutoff or reduced CO through combustion control; (2) are durable enough to survive in heat exchangers or flues of gas appliances; and (3) can be applied for use in U.S. gas furnaces and boilers.

The proposed rule provides test methods to introduce a simulated 400 ppm, 300 ppm, 200 ppm, and 150 ppm CO emission level into the exhaust gas to determine if the safety system passes or fails the proposed performance requirements.

As explained in Tab B of the Staff NPR Briefing Package, staff assesses that the proposed rule would be 90 to 100 percent effective in preventing CO deaths and injuries associated with gas furnaces and boilers, because CO production at the gas furnace and boiler would be limited to levels that produce a headache in exposed consumers. Staff's assessment is based on the following key metrics used to assess the capability of the performance requirement in protecting consumers from the identified CO exposure risks:

- *Detecting CO at the source of production:* This provides a greater level of protection to consumers than residential CO alarms because it detects CO at the source of production within the gas furnace or boiler, before it leaks into a dwelling space, and allows for an earlier response time to protect consumers.
- *Prevents or limits production of harmful levels of CO:* Shutoff or modulation of the gas furnace or boiler directly addresses harmful CO production.
- *Selecting CO response concentrations that fall on the 20 Percent COHb curve:* Selecting multiple CO response concentrations or a single, threshold CO concentration (150 ppm or higher) limits the severity of any potential health effects to a headache (*i.e.,* the 20 percent COHb curve).
- *Addresses all known hazard patterns:* Although the performance requirements do not prevent combustion product (including CO) leakage, the requirements do protect against serious harm from leakage of combustion products by limiting/preventing CO production.

VII. Response to Comments

In response to the Commission's 2019 ANPR regarding residential gas furnaces and boilers, CPSC received 15 comments from the public, divided between supporters and opponents of the proposal. Opposing comments came primarily from the gas appliance industry. The comments can be found under docket number CPSC–2019–0020, at: *www.regulations.gov.* Below is summary of the comments and CPSC's responses by topic area.

Alternatives to Performance Requirements

Comment: Nine commenters (A.O Smith, Carrier, Crown, Rheem, US Boiler Co. Edward Johan (USBC EJ), US Boiler Co. John Busse (USBC JB), Air Conditioning, Heating, and Refrigeration Institute (AHRI), Strauch, and Stanonik) asserted that rulemaking is not necessary because residential CO alarms will prevent CO poisoning from gas appliances. One commenter (Stanonik) further claimed that information from CPSC's IDI reports show that CO alarms are effective in protecting participants from exposure to hazardous levels of CO and that a survey being conducted by CPSC should be completed before rulemaking occurs. Four commenters (Crown, USBC EJ, USBC JB, and AHRI) supported changing the ANSI gas appliance standards and/or building codes to require CO alarm installation.

Response: CPSC lacks statutory authority to mandate that consumers install CO alarms in their homes. Although the Commission urges use of residential CO alarms, not all homes are equipped with functioning and maintained CO alarms, and fewer still have them in all occupied spaces into which CO may leak from a gas furnace or boiler. Despite CPSC, state and local governments, and the private section information and education campaigns to increase the use of CO alarms, injuries and fatalities that occur annually are evidence that this hazard continues to kill and injure consumers, supporting the view that effective performance requirements for gas appliances are critical to consumer safety.

Comment: USBC JB stated that a CO monitor in the equipment room or living space would provide a better solution than a CO monitor on the appliance.

Response: A monitoring system located within the equipment room or living space would not necessarily detect CO at all foreseeable points of potential leakage along the length of the vent system. In contrast, detecting excessive CO leakage at the point of production on the appliance would protect consumers from CO exposure, regardless of the point or mechanism of leakage, or the cause of elevated CO production.

Comment: USBC JB stated that CPSC should sponsor and provide funding for a multi-functional task force to develop solutions to reduce and eliminate CO poisoning caused by residential gas furnaces and boilers.

Response: CPSC has contributed extensively to the development of proposed solutions to the CO hazard from gas furnaces and boilers. Staff's memorandum in Tab D of the Staff ANPR Briefing Package summarizes CPSC staff's efforts from 2000 to 2019 to work with the ANSI Z21/T83 Technical Committee to address carbon monoxide poisoning that was continuing to occur despite revisions to the gas appliance standards. CPSC staff conducted research and shared the results of that research, along with incident reports, with the Committee. Staff also submitted two proposals to the Technical Committee (in 2000 and 2015) requesting that the relevant voluntary standards add requirements to

[8] EN 15502–2–1, *Gas-fired central heating boilers, Part 2–1: Specific standard for type C appliances and Type B2, B3 and B5 appliances of a nominal heat input not exceeding 1,000 kW.*

[9] EN 15502–2–2, *Gas-fired central heating boilers Part 2–2: Specific standard for type B 1 appliances.*

[10] BS EN 13611, Safety and control devices for burners and appliances burning gaseous and/or liquid fuels—General requirements.

[11] BS EN 16340, Safety and control devices for burners and appliances burning gaseous or liquid fuels—Combustion product sensing devices.

[12] Gas/air ratio controls for gas burners and gas burning appliances—Part 2: Electronic types

[13] JIS–S–2109, *Gas burning water heaters for domestic use.*

[14] JIS–S–2112. *Gas hydronic heating appliances for domestic use.*

[15] JIS–S–2122, *Gas burning space heaters for domestic use.*

address the production of hazardous levels of CO and the risk of that CO entering the living space of a dwelling. Despite staff's efforts over two decades, as well as the developments of voluntary standard requirements in Japan and Europe, the U.S. voluntary standards community has not adequately addressed the CO risk at the source of production in gas appliances. Indeed, in 2019 the Technical Committee disbanded the working group assessing possible revisions to the standards.

Comment: USBC JB predicted that gas furnaces and boilers will eventually be replaced with electric heating appliances because current and future efforts to reduce carbon emissions will eliminate or restrict the availability of natural gas for residential appliances.

Response: Gas appliances and boilers continue to be sold in large numbers for residential heating in the United States, without an effective voluntary solution to the CO hazard. Therefore, the Commission preliminarily concludes that mandatory performance requirements to address CO production by gas furnaces and boilers are necessary to reduce deaths and injuries from CO exposure that otherwise will continue to occur.

Comment: USBC JB referred to periodic inspection and service of gas appliances and asked if CPSC's data addresses whether ''formalized inspection and service requirements would reduce carbon monoxide poisoning.'' Two other commenters (Crown and AHRI) asserted that a formal program to check installation, service, and maintenance will reduce carbon monoxide incidents.

Response: CPSC lacks statutory authority to mandate homeowners' spending for maintenance services. Further, CPSC staff is not aware of data indicating that maintenance alone can address the deadly CO hazard from gas furnaces and boilers. Manufacturers already recommend routine maintenance of furnaces and boilers, yet injuries and deaths continue to occur for the reasons described above.

Comment: Crown and USBC JB asserted that CPSC should rely on recalls to prevent/reduce CO incidents involving gas boilers and furnaces.

Response: When a product is subject to a CPSC recall, the product already may have been involved in an incident, in this case a CO exposure incident that may have caused serious injury or death. The CPSC will continue to utilize the CPSA section 15 recall process, independent of this this rulemaking, but it is not a substitute for the proposed rule, which addresses elevated CO levels that may be unrelated to a defect in the furnace or boiler itself.

Rely on Consumer or Installer Education

Comment: Carrier, Crown, Rheem, USBC EJ, and USBC JB stated that information and education programs for consumers, installers, and maintenance personnel will adequately address CO poisoning hazards.

Response: Information and education campaigns currently exist, and yet numerous deaths and injuries continue to occur due to CO poisoning from gas furnaces and boilers demonstrating that these campaigns do not adequately address the hazard.

Warnings rely on educating consumers about the hazard and persuading consumers to alter their behavior in some way to avoid the hazard. To be effective, warnings also depend on consumers noticing or otherwise receiving the message, attending to the message, remembering the recommended behaviors when needed, and behaving consistently, regardless of situational or contextual factors that influence precautionary behavior, such as fatigue, stress, or social influences. Thus, providing warnings and instructions about hazards is less effective than either designing the hazard out of a product or guarding the consumer from the hazard.

Rely on Voluntary Standards

Comment: Commenters A.O. Smith, Rheem and the National Propane Gas Association (NPGA) stated that the CPSC should work with voluntary standards organizations to address the hazard.

Response: Tab D of the Staff ANPR Briefing Package summarizes CPSC staff's efforts from 2000 to 2019 to work with the ANSI Z21/T83 Technical Committee to address carbon monoxide poisoning incidents. As described above, despite staff's efforts, the voluntary standards organizations have not adopted adequate performance requirements to address the hazard.

Comment: Carrier and AHRI noted that current appliance designs certified to the applicable ANSI/CSA Z21 safety standards already incorporate several safety features that reduce the risk of carbon monoxide production. These include blocked vent/intake switches, draft hood spill switches, and flame roll-out switches. Another commenter (USBC JB) stated that the ANSI standard for direct and non-direct vent boilers includes a test method to limit CO levels when the flue outlet is blocked or partially blocked, which USBC JB believes addresses the impact of snow blocking the vent. Stanonik stated that two-pipe or direct vent systems have fewer CO risks and some atmospherically vented appliances are not susceptible to depressurizing and back drafting that lead to CO exposure in the living space, and that these features, combined with the proper installation, service, and maintenance of the appliances, would eliminate the CO risk.

Response: Blocked vent/intake pressure switches, draft hood spill switches, and flame rollout switches are all requirements that were added to and became effective in the standards between 1987 and 1993. Yet injuries and deaths from CO poisoning have continued to occur despite the existence of these voluntary standards provisions. Indeed, as discussed in Tab B of the Staff NPR Briefing Package, the particular voluntary standards provisions cited by these commenters have failed to prevent deaths and injuries in real-world scenarios.

Adverse/Unintended Consequences of Shut-Off Triggered by CO Sensor

Comment: Six commenters (Carrier, Crown, USBC EJ, USG JB, AHRI, and Strauch) stated that improper shut-down of a gas appliance by a CO sensor will cause a no-heat hazard for consumers.

Response: In response to these comments and other staff analyses, the proposed rule would require a fail-safe provision that would operate for the life of the appliance. If a CO sensor, combustion sensor, combustion control system, or other device designed to meet these requirements, fails to operate properly or at all, then the appliance shall shutdown and restart after 15 minutes, repeating this cycle and continuing to provide heat until the failed component is replaced, while also alerting the consumer of the hazard. For the life of the gas furnace or boiler, the proposed fail-safe provision would be required to notify consumers and service technicians of device failure by either a flashing light, or other appropriate code on the appliance control board, that corresponds to the device failure.

Comment: Crown stated that a shut-down central heating appliance may encourage the use of less safe heating alternatives.

Response: Shut-off devices on gas furnaces and boilers (*e.g.,* BVSS, flame rollout switches, and over temperature limit switches) have been required by the ANSI Z21 standards for 25 to 30 years. However, we are not aware of any trends of consumers using less safe heating alternatives as the result of these other safety shut-down devices on these

products. Furthermore, the proposed rule has a fail-safe provision, as described above, which provides warning to consumers of a CO sensor issue without complete loss of functionality of the gas furnace or boiler.

Carbon Monoxide Sensor—Sensitivity and Durability

Comment: American Gas Association (AGA) and USBC JB asserted that measuring ''air-free'' CO concentrations benchmarked to the ANSI-recognized ''safe'' concentration of 400 ppm would be complex because a carbon monoxide monitor measures ''raw'' CO concentrations which includes the ''air-free'' carbon monoxide concentration multiplied by the ratio of air that was not used in combustion. Consequently, the air-free CO will always be lower than the measured CO.

Response: CPSC staff agrees that an air-free measurement calculation would be more complex since it would require the measurement of carbon dioxide or oxygen as well, and the proposed rule does not require this calculation.

Comment: USBC JB stated that the performance of existing CO sensors has not been established at the 400 ppm level and lower.

Response: In general, sensor manufacturers specify the maximum and minimum concentration range that a sensor can detect, as well as whether the sensor provides a linear output voltage in response to the gas (*i.e.,* CO) it's designed to detect. For example, if a manufacturer specifies that their sensor has a linear response range of 0 to 10,000 ppm of CO, then the sensor can detect between 0 and 10,000 ppm CO, including 400 ppm CO or lower. CPSC staff has identified multiple CO sensors with an advertised linear response range that extends below 400 ppm.

Comment: Strauch asserted that research does not show that CO sensors are durable enough to last for 15 to 20 years. Another (USBC JB) stated that performance requirements normally address device tolerances to allow conformance at prescribed conditions and avoid nuisance issues.

Response: We do not agree with the premise that CO sensors must have a 15-to-20 year lifespan in order for the proposed rule to be effective. Many parts may fail during the lifetime of a gas furnace or boiler, resulting in the need for replacement or a service call to fix or replace the part. CO sensors would be expected to be treated in this same manner as other parts that need to be replaced during the lifespan of the product. The costs of such services are included in the preliminary regulatory analysis in section IX of the preamble. Regarding the comment about tolerances, manufacturers will need to select appropriate sensors and other equipment to ensure that their furnaces and boilers comply with the proposed standard.

Requirements in International Standards

Comment: Crown and USBC JB asserted that there is no widespread use of CO sensors in gas appliances in Europe and Japan. One commenter (AHRI) observed that ''the EN standards (EN 15502–1, EN 15502–2–1 and EN 15502–2–2) do not require manufacturers to incorporate a CO-sensor shut-off device within the appliance.'' In addition, that commenter stated none of the U.S. or international standards, including JIS S 2019, specifically require a CO sensor within the appliance. AHRI stated that the most commonly used CO sensor, manufactured by Nemoto Sensor Engineering, Ltd., is designed to work when carbon monoxide levels exceed 1000 ppm.

Response: While the Japanese standard, JIS S 2019, and the European standards, EN 15502–2–1 and EN 15502–2–2, do not specifically require a CO sensor in-situ (*i.e.,* within the heater exchanger or flue passage ways of the appliance), each standard includes an option that allows for CO and combustion sensors in-situ if the manufacturer chooses to use that approach to meet the requirements of the respective standards. Some European and Japanese gas boilers products certified to those standards are equipped with CO sensor shutoff capability. More generally, the existence of the option to use CO sensors incorporated in-situ to meet the requirements of respective standards reinforces that such sensors are feasible. Regarding Nemoto sensors, the published Nemoto product literature (*https://sensor.nemoto.co.jp/en/product/detail/nap-78su/*) indicates that the CO sensors in question have a linear response range of zero to 10,000 ppm CO; thus the sensors in question are represented by Nemoto to have the capability to provide an output voltage response to all of the CO levels within that range, including 400 ppm CO and lower.

Feasibility of Performance Requirements With Existing CO/Combustion Technology

Comment: Carrier and AHRI stated that ''a minimum of 20 years is needed to replace existing residential gas appliances with a carbon monoxide sensor-equipped appliances'' based on the anticipated lifespan of an appliance. USBC JB stated that it would take a minimum of two to three years to develop and validate performance requirements and then revise the voluntary standards through the consensus process.

Response: We agree that it will take time for existing gas furnaces and boilers to be replaced by newly installed equipment that meets the requirements of the proposed rule mandating additional safety features for future gas furnaces and boilers; inasmuch as the proposed rule does not require replacement of existing installed gas furnaces and boilers and would only apply to the future manufacture of gas furnaces and boilers. This is reflected in the preliminary regulatory analysis in Section IX of the preamble. Approximately two million gas furnaces and 800,000 gas boilers without CO sensors are sold each year, thus prolonging the time it would take to replace old stock. As a result, each year of further delay in instituting safety features to address the CO hazard will result in millions of units without these features being sold and installed and remaining in homes for multiple decades, risking additional preventable deaths and injuries.

Comment: Carrier and AHRI stated that CO sensors will not detect leakage from the venting system.

Response: The proposed rule focuses on the source rather than leakage points throughout the exhaust path because of the extent, variability, and potential inaccessibility of the exhaust path in homes. We agree that a CO sensor will not detect leakage from a venting system. However, CO detection at the source of production would provide protection to consumers regardless of the location of downstream leakage. For these reasons, we disagree with AHRI's assertion that a CO sensor-equipped appliance would be ineffective against a compromised vent.

Comment: A.O. Smith stated that CO sensors in a gas appliance cannot easily be replaced in the field.

Response: The commenter provided no technical evidence to support the claim that CO sensors cannot be installed so that they are easily replaced in the field. CPSC staff is aware of and has access to gas appliances that utilize CO sensors, air/fuel ratio sensors, and other combustion control devices within the combustion chamber of flue passageways to provide CO safety and/or energy efficiency. CO sensors are no more complex and do not present any greater difficulty in gaining access to the

devices for maintenance or replacement than other safety devices, such as pressure switches, flame sensors, and flame rollout switches, currently required by the ANSI standards for gas appliances. Sensors are comprised of a sensing element covered by shielding and a mounting flange. Typically, the shielded, sensing element is inserted through an access hole through the bulkhead of a combustion chamber, plenum, or flue passageway. The sensor is generally mounted to the bulkhead with two screws with a heat-resistant gasket between the mounting flange and the bulkhead. We assess that CO sensors in a gas appliance could be replaced in consumer homes in a manner similar to other existing gas furnace or boiler components that are currently serviced and replaced in consumer homes.

Comment: Rheem asserted that some of the referenced/observed failure modes in the ANPR cannot be addressed through appliance design alone.

Response: We do not agree with the assertion that failure mode issues cannot be addressed through appliance design. By ensuring that harmful levels of CO are not produced in the gas furnace or boiler, the proposed requirements remove the need to provide protection throughout the entire exhaust vent system.

Comment: Stanonik stated that the document ''Findings from CPSC's 2014 Carbon Monoxide/Combustion Sensor Forum and Request for Information'' (*https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_Findings-from-the-FY14-Sensor-Forum-and-RFI.pdf*) indicates that a specific sensor technology that appeared to address durability and longevity concerns is very expensive and reflected the ''significant process'' involved in developing durable and reliable sensor products.

Response: We agree that the cost the commenter referenced would be high. However, the sensing technology in question was an evaluation unit, not a full-scale production unit, and came with electronic controls necessary to operate and evaluate the sensor, resulting in elevated costs for that particular sensing technology. The cost per unit typically goes down with large-scale production. CPSC staff estimates costs for volume purchases in the range of approximately $5 to $15 per unit. The preliminary regulatory analysis in section IX of the preamble provides further analysis of potential costs and benefits.

VIII. Description of the Proposed Rule

The proposed rule would create a new part 1408, ''Safety Standard for Residential Gas Furnaces and Boilers.'' The provisions of the proposed rule are described below.

A. Proposed Section 1408.1 Scope, Purpose, and Effective Date

Proposed section 1408.1 provides that new part 1408 establishes a consumer product safety standard that would provide performance requirements for residential gas furnaces and boilers that are consumer products used to heat dwellings. The purpose of these requirements is to reduce the occurrence of carbon monoxide-related deaths, injuries, and exposures associated with gas furnaces, boilers, and wall and floor furnaces. All requirements of the proposed rule apply to all residential gas furnaces, boilers, and wall and floor furnaces that are manufactured after the proposed effective date, which is 18 months after publication of the final rule in the **Federal Register**.

B. Proposed Section 1408.2 Definitions

Proposed section 1408.2 provides definitions that apply for purposes of part 1408. Proposed section1408.2 provides definitions for the covered categories of furnaces and boilers. The proposed definitions are based on the definitions used in ANSI Z21.47–2021, ANSI Z21.13–2022, and ANSI Z21.86–2016 for the same product types.

C. Proposed Section 1408.3 Performance Requirements for Gas Furnaces and Boilers

Proposed section 1408.3 provides general requirements, performance requirements, test configuration, and test methods for all residential gas furnaces and boilers. Section VII.B of the preamble provides the technical justification for these proposed requirements.

1. Proposed Section 1408.3(a) (General Requirements)

Proposed section 1408.3(a) provides that all residential gas furnaces and boilers must have a means to either directly or indirectly monitor the concentration of carbon monoxide produced during the combustion process and shut down or modulate combustion to reduce average CO concentrations to below the CO levels for the durations of time specified in proposed section 1408.3(b). The gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm if the average CO emissions reach or exceed the CO limits and time durations specified in section 1408.3(b).

Proposed section 1408.3(a) also states that indirect monitoring and control of CO emissions can be accomplished by monitoring and controlling other combustion parameter(s) that accurately correlate to the production of CO. Proposed section 1408.3(a) provides examples of parameters that can serve as a proxy for CO production such as carbon dioxide (CO_2), oxygen (O_2), the Gas/Air Ratio, and the flame ionization current produced by the burner flame.

2. Proposed Section 1408.3(b) (Performance Requirements)

Proposed section 1408.3(b) provides a performance requirement that a gas furnace or boiler must be equipped with a means to continuously monitor CO emission and must meet the requirements described in either proposed section 1408.3(b)(1) or (b)(2) (direct means to monitor CO emissions) or (b)(3) or (4) (indirect means to monitor CO emissions) when tested using the test method described in proposed section 1408.3(d). Proposed paragraphs 1408.3(b)(1) and (2) provides two options for gas furnaces and boilers manufacturers to use direct means to monitor CO emissions that must cause either shut-down or modulation of the gas furnace or boiler combustion, based on conditions within the gas furnace or boiler for a range of specified average CO concentrations for the specified time frames. Proposed section 1408.3(b)(3) provides two options for gas furnace and boiler manufacturers to use an indirect means to monitor CO emissions that must either cause shut-down of the gas furnace or boiler or cause modulation of combustion of the gas furnace or boiler, based on conditions within the gas furnace or boiler for a range of specified average CO concentrations for the specified time frames described.

Proposed section 1408.3(b)(4) provides a fail-safe requirement that during the life of the gas furnace or boiler, if a CO sensor, combustion sensor, combustion control system, or other device designed to meet these requirements fails to operate properly or at all, then the gas furnace or boiler must shutdown and restart after 15 minutes and repeat this cycle until the failed component is replaced. The requirement mandates that consumers and service technicians must be notified of device failure by either a flashing light, or other appropriate code on the gas furnace or boiler control board, that corresponds to the device failure.

3. Proposed Section 1408.3(c) (Test Configuration)

Proposed section 1408.3(c) describes the requirements that gas furnace or boilers must be configured in

accordance with the provisions of the combustion sections of the respective voluntary standards (section 5.8.1 of ANSI Z21.47–2021 for gas furnaces; section 5.5.1 of ANSI Z21.13–2022 for gas boilers; and sections 9.3.1, 11.2.1, and 13.3.1, of ANSI Z21.86–2016 for gas wall and floor furnaces) with respective instruction on how products are to be configured before testing to proposed section 1408.3(d).

4. Proposed Section 1408.3(d) (Test Procedure)

Proposed section 1408.3(d) provides the test procedure to be used to test a gas furnace or boiler after the product has been configured pursuant to proposed section 1408.3(b) to demonstrate compliance with the performance requirements provided in proposed section 1408.3(b).

D. Proposed Section 1408.4 Incorporation by Reference

Proposed section 1408.4 incorporates by reference ANSI Z21.47–2021, ANSI Z21.13–2022, and ANSI Z21.86–2016 regarding the test setup cited in proposed section 1408.3 and provides information on where the standards are available.

E. Proposed Section 1408.5 Prohibited Stockpiling

Pursuant to section 9(g)(2) of the CPSA, 15 U.S.C. 2058(g)(2), the proposed rule would prohibit a manufacturer from ''stockpiling'' or substantially increasing the manufacture or importation of noncompliant gas furnaces and boilers between the date publication of the final rule and the effective date. The provision, which is explained more fully in Tab D of the Staff NPR Briefing Package, would prohibit the manufacture or importation of noncompliant products at a rate that is greater than 106 percent of the base period in the first 12 months after promulgation, and 112.50 percent of the base period for the duration of 12 months after promulgation until the effective date. The base period is defined in the proposed rule as the calendar month with the median manufacturing volume, among months with manufacturing volume, during the last 13 months prior to the rule's publication.

We propose a rate of 106 percent for the first 12 months and a rate 112.50 percent in the final 6 months between publication and effective date based on the historical growth of the industry. We propose a higher rate of 112.50 percent for the second year to account for the baseline growth of the industry in the second year.

Individual manufacturers may experience growth rates outside the historical range. Shipment data for gas furnaces and boilers show a steady, yet seasonal, market. Shipments of gas furnaces and boilers begin to rise in March and continuously increase until December, after which they fall off sharply. The Commission seeks public comment on manufacturing, the seasonality of sales, and supply chain of gas furnaces and boilers to further understand these topics.

F. Appendix A to Part 1408—Findings Under the Consumer Product Safety Act

The findings required by section 9 of the CPSA are discussed throughout this preamble and set forth in Appendix A to the proposed rule.

IX. Preliminary Regulatory Analysis

Pursuant to section 9(c) of the CPSA, publication of a proposed rule must include a preliminary regulatory analysis containing:

- A preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;
- a discussion of why a relevant voluntary safety standard would not eliminate or adequately reduce the risk of injury addressed by the proposed rule; and
- a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits and why such alternatives should not be published as a proposed rule.

This preamble contains a summary of the preliminary regulatory analysis for the proposed rule. Tab D of the Staff NPR Briefing Package contains a detailed analysis.

A. Market Information

1. The Product

Gas furnaces and boilers are vented gas heating appliances that heat residential dwellings. Section III of the preamble provides a detailed discussion of the nature and operation of gas furnaces and boilers. The average product life for gas furnaces and boilers ranges from approximately 22 to 25 years.

Gas furnaces and boilers include central warm-air furnaces and boilers as well as floor, and wall furnaces.

- *Central warm-air furnaces and boilers* use a central combustor, or boiler, to heat air using natural gas, and liquid propane. Some of these furnaces move the heated air using a blower or fan through ducts while others rely on the natural flow of warm air going up and cold air down to circulate air. Most boilers supply steam or hot water through conventional radiators or baseboard radiators.
- *Floor and wall furnaces* are less common than central furnaces and boilers and consist of ductless combustors to heat air. A floor furnace and wall furnace heat the physical parts of the house (*i.e.,* floor or wall) to heat the dwelling. A furnace is typically located in a basement and delivers heated air through a large register in the floor above it.

Consumers purchase gas furnaces and boilers primarily through contract installers, but they may also purchase units at retail stores and online retailers. CPSC staff estimate the average retail price of gas furnaces to be $1,660 and $3,719 for gas boilers.

2. Market Trends for Gas Furnaces and Boilers

Staff identified as many as 70 firms that manufacture or import residential gas furnaces and boilers. When accounting for subsidiaries and multiple brands provided by the same company, staff identified 20 parent firms. In 2016, the largest 10 firms by revenue accounted for 83.3 percent of heating equipment sales. Seven of these firms are based in the U.S.

Department of Energy's (DOE) most recent Residential Energy Consumption Survey (RECS) reports the total number of gas furnaces, gas boilers, and wall furnaces in-use to be 60.94 million in 2020. This is an increase from 57.90 million in 2015. Between 2015 and 2020, therefore, the number of in-scope gas furnaces and boilers grew at an average annual rate of 1.03 percent.

DOE's Government Regulatory Impact Model (GRIM) projects gas furnace sales in 2021 to be 3.58 million units and gas boilers to be 0.30 million units. CPSC staff estimated that residential gas furnaces and boilers sales in 2021 to be $5.94 billion and $1.12 billion, respectively.

CPSC staff estimate that residential gas boiler imports average $117.67 million annually. The Commission requests comment on the value and quantity of gas furnaces and boilers imports that would be subject to a proposed rule.

3. Future Market Size for Gas Furnaces and Boilers

Staff used a 1.03 percent annual growth rate derived from DOE's GRIM to project sales into the future. Using this approach, staff estimates the number of

in-use, in-scope gas furnaces and boilers will grow from 64.13 million in 2025 to 90.49 million in 2054.

B. Preliminary Description of Potential Costs and Benefits of the Rule

Staff conducted a cost assessment of the proposed rule. The proposed rule would impose the following costs: increased variable costs of producing furnaces and boilers with CO sensors and shutoff capabilities; one-time conversion costs of redesigning and modifying factory operations for installing CO sensors; increased maintenance costs of gas furnaces and boilers to consumers; and deadweight loss [16] in the market caused by the increasing price due to regulation and the subsequent decline in sales. Staff performed a 30-year prospective cost assessment (2025–2054) on all four cost categories and estimated the total annualized cost from the proposed rule to be $602.27 million, discounted at three percent.[17] Staff estimated the per-unit cost of a gas furnace or boiler from the proposed rule to be $158.11, discounted at three percent.

Staff also conducted a benefits assessment of the proposed rule. The benefits assessment accounted for the prevention of deaths and injuries from compliant gas furnaces and boilers, which staff monetized using the Value of Statistical Life (VSL) for deaths, and the Injury Cost Model (ICM) for injuries. Over the 30-year study period, staff estimated the proposed rule would prevent 576 deaths (19.20 deaths per year) and 160,699 injuries (5,357 per year). The total annualized benefits from the proposed are $356.52 million, discounted at three percent. Staff estimated the per-unit benefits from the proposed rule to be $93.60, discounted at three percent. Staff calculates net benefits (benefits less costs) to be −$245.74 million on annualized basis, discounted at three percent. The net benefits on per-unit basis are −$64.51, discounted at three percent. Alternatively, this can be described as the proposed rule being a net cost of $64.51 per gas furnace or boiler, which represents approximately three percent of the average price of a gas furnace or boiler, to prevent an estimated 576 deaths and 160,699 injuries over 30 years.

[16] Deadweight loss is the value of lost transactions that may occur after major market events such as a new regulation.

[17] Staff uses a discount rate to incorporate the time value of money during the 30-year study period. In the analysis, staff presents both costs and benefits in undiscounted dollars, discounted at three percent, and discounted at seven percent.

Finally, staff conducted a sensitivity analysis that showed if, by 2035 manufacturers were able to develop compliant gas furnaces and boilers with CO sensors that did not need replacement, and if the analysis took into account that a child's death is considered twice as costly as an adult death,[18] the benefit-cost ratio would increase to 0.78.

C. Evaluation of Voluntary Standards

Based on staff's evaluation of the relevant ANSI standards discussed in section V of the preamble, the Commission preliminarily determines that current U.S. voluntary standards do not adequately address the hazard of CO exposure from gas furnaces and boilers. Further, the Z21/83 Technical Committee and the subordinate Technical Subcommittees have no clear plan to address these hazards in the relevant voluntary standards. None of the commenters on the ANPR submitted any recommendations for proposed requirements, nor did any commenters submit an existing voluntary standard or a portion of one that would adequately address the CO exposure risk that this proposed rule would address. No standard or portion of a standard was submitted to the Commission under section 9(a)(5) of the CPSA.

D. Alternatives to the Proposed Rule

The Commission considered four alternatives to the proposed rule: (1) continue to work and advocate for change through the voluntary standards process; (2) rely on the use of residential CO alarms; (3) continue to conduct education and information campaigns; and (4) rely on recalls. Each alternative is discussed in detail below.

1. Continue To Work and Advocate for Change Through the Voluntary Standards Process

Section V of this preamble highlights CPSC staff's participation in the voluntary standard development process for ANSI Z21.47, Z21.13, and Z21.86. Despite staff encouraging industry to adopt a standard that adequately addresses the hazard, and providing industry with the necessary factual foundation, industry has not adopted such a standard in over 20 years. For this reason, the Commission is not adopting this alternative.

[18] For more information see CPSC's Draft Guidance for Estimating Value per Statistical Life (88 FR 17826), *https://www.federalregister.gov/documents/2023/03/24/2023-06081/notice-of-availability-proposed-draft-guidance-for-estimating-value-per-statistical-life.*

2. Rely on the Use of Residential CO Alarms

CPSC has long promoted CO alarm adoption and states have increasingly required CO alarms in homes over the last two decades. Yet there has not been a significant decline in CO injuries and fatalities, demonstrating that CO alarm adoption alone is insufficient to address the hazard. We also note that residential CO alarms may fail to alert due to battery failure, poor maintenance, manufacturer defect, age, incorrect installation, or defects. Finally, a CO alarm would not shut down a gas furnace or boiler producing a dangerous amount of CO and thus would require the occupant to properly recognize what to do when the alarm is triggered. For these reasons, the Commission is not adopting this alternative.

3. Continue To Conduct Education and Information Campaigns

Despite education and information campaigns by CPSC and others regarding CO hazards, CO death and injuries for gas furnaces and boilers remain high. Education and information campaigns alone have not adequately addressed the CO hazard from gas furnaces and boilers in the absence of a performance standard. For these reasons, the Commission is not adopting this alternative.

4. Rely on Recalls

Although not all instances of excessive CO concentrations result from a defect in the gas furnace or boiler, the Commission could seek voluntary or mandatory recalls of gas furnaces and boilers that present a substantial product hazard. Recalls only apply to an individual manufacturer and product, and generally do not extend to similar products, and occur only after consumers have purchased and used such products with possible resulting deaths or injuries due to exposure to the hazard. Additionally, recalls can only address products that are already on the market but do not directly prevent unsafe products from entering the market. In the absence of a rule, hazardous gas furnaces and boilers will continue to see sales of several million units annually and the stock of hazardous products will continue to grow. Additionally, while detached gas furnaces and boilers could be easily recalled, installed gas furnace and boiler recalls can be disruptive and costly. For these reasons, the Commission does not choose this alternative.

X. Initial Regulatory Flexibility Analysis

Whenever an agency publishes an NPR, Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to prepare an initial regulatory flexibility analysis (IRFA), unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The IRFA, or a summary of it, must be published in the **Federal Register** with the proposed rule. Under Section 603(b) of the RFA, each IRFA must address:

(1) a description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed 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

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The IRFA must also describe any significant alternatives to the proposed rule that would accomplish the stated objectives and that minimize any significant economic impact on small entities.

A. Reason for Agency Action

The intent of this rulemaking is to reduce deaths and injuries resulting from carbon monoxide leaks from gas furnaces and boilers by establishing a mandatory performance standard requiring gas furnaces and boilers to shut off or modulate when CO levels reach specified amounts for a certain duration.

B. Objectives of and Legal Basis for the Rule

The Commission proposes this rule to reduce the risk of death and injury associated with CO leakage from residential gas furnaces and boilers. This standard is promulgated under the authority of the CPSA. To issue a mandatory standard under CPSA section 7, 15 U.S.C. 2056, the Commission must follow the procedural and substantive requirements in section 9 of the CPSA, 15 U.S.C. 2058. *See* 15 U.S.C. 2056(a).

C. Small Entities to Which the Rule Will Apply

The proposed rule would apply to all manufacturers and importers of gas furnaces and gas boilers. CPSC staff is aware of as many as 70 firms manufacturing gas furnaces and boilers for the U.S. market. When accounting for subsidiaries and multiple brands provided by the same company, staff identified 20 parent firms.

Using SBA guidelines, staff identified two small manufacturers of gas furnaces, three small manufactures of residential gas boilers, and one importer of gas furnaces that may fall within the scope the rule. The Commission requests comment on additional manufacturers and importers of gas furnaces and boilers that may meet the SBA definition of a small business.

D. Compliance, Reporting, and Record-Keeping Requirements of Proposed Rule

In accordance with Section 14 of the CPSA, 15 U.S.C. 2063, manufacturers would have to issue a General Certificate of Conformity (GCC) for each of their gas furnace or boiler models, certifying that the model complies with the proposed performance requirement. Each GCC must also be based on a test of each product or a reasonable testing program and provided to all distributors or retailers of the product. The manufacturer would have to comply with 16 CFR part 1110 concerning the content of the GCC, retention of the associated records, and any other applicable requirements.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

No Federal rules duplicate, overlap, or conflict with the proposed rule.

F. Potential Impact on Small Entities

1. Impact on Small Manufacturers

The preliminary regulatory analysis in Section IX of this preamble discusses costs more fully. Based on that analysis, to achieve compliance with the proposed rule's performance requirements, small domestic manufacturers would incur costs from the increased variable costs of producing furnaces and boilers with CO sensors and shutoff capabilities and testing and certifying such products, as well as the one-time conversion costs of redesigning and modifying factory operations for installing CO sensors.

Installing CO sensors and shutoff capabilities in a gas furnace or boiler is a variable cost that is attached to each unit produced. Staff used a Guidehouse study (Guidehouse 2021) to find that the cost to manufacturers (without any markup included) at an annual production level of 119,572 gas furnace and boiler units yields an average incremental cost of $66.47 per unit.[19] This is an annual total of $7.95 million ($66.47 × 119,572) for each small firm.

Regarding the one-time conversion costs, DOE's findings from its 2015 Rules on Gas Residential Furnaces and Boilers (80 FR 13120 and 80 FR 17222) found an industry cost of $413.28 million (inflated to 2021 dollars).[20] This would suggest a maximum conversion cost for small firms of $69.02 million (16.7 percent × $413.28 million) or $13.80 million per firm among the small five manufacturers.

2. Impact on Small Importers

Staff identified one small importer of products that would be within the scope of the standard. Importers may pass on testing responsibility and GCC creation to the foreign manufacturers and then issue the resulting certificate. Changes in production and certification costs incurred by suppliers from the standard could be passed on to the importers, which in turn are likely to be passed onto consumers given the relatively inelastic demand for heating appliances. For this reason, the Commission does not believe that the proposed rule will have a significant impact on small importers.

The Commission seeks public comment on information on importers of gas furnaces and boilers; specifically, how many are imported, how many different models each importer sells, and what technologies those models are currently using (atmospheric venting, condensing, non-condensing, premix power burners, etc.). The Commission also seeks public comment on information regarding to what degree supplying firms tend to pass on increases in production and regulatory costs to importers, and to what extent the ability to pass on these costs is limited by the ease with which importers can switch suppliers or substitute to alternative products, such as electrical furnaces and boilers.

G. Alternatives for Reducing the Adverse Impact on Small Businesses

The Commission considered four alternatives to the proposed rule: (1) continue to work and advocate for change through the voluntary standards

[19] Weighted average between retail price increase from gas furnaces ($65.22) and boilers ($81.10) for the first year impact of the rule.

[20] Conversion costs were calculated in 2013 dollars and reported in 2020 dollars adjusted for 2013–2020 inflation using the Consumer Price Index-Urban.

process; (2) rely on the use of residential CO alarms; (3) rely on education and information campaigns; and (4) rely on recalls. The Commission is not adopting these alternatives for the reasons in Section IX of the preamble.

The Commission welcomes public comments on this IRFA. Small businesses that believe they would be affected by the proposed rule are encouraged to submit comments. The comments should be specific and describe the potential impact, magnitude, and alternatives that could reduce the impact of the proposed rule on small businesses.

XI. Incorporation by Reference

The Commission proposes to incorporate by reference: ANSI Z21.47–21, Standard: *Gas-fired central furnaces;* ANSI Z21.13–22, Standard: *Gas-fired low-pressure steam and hot water boilers;* and ANSI Z21.86–16, Standard: *Vented Gas-fired space heating appliances.* The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b)(3).

In accordance with the OFR regulations, section IV of this preamble summarizes the major provisions of ANSI Z21.47–21, Standard: *Gas-fired central furnaces;* ANSI Z21.13–22, Standard: *Gas-fired low-pressure steam and hot water boilers;* and ANSI Z21.86–16, Standard: *Vented gas-fired space heating appliances* that the Commission incorporates by reference into 16 CFR part 1408. The standard itself is reasonably available to interested parties. Until the final rule takes effect, read-only copies of ANSI Z21.47–21, Standard: *Gas-fired central furnaces;* ANSI Z21.13–22, Standard: *Gas-fired low-pressure steam and hot water boilers,* and ANSI Z21.86–16, Standard: *Vented gas-fired space heating appliances* are available for viewing, at no cost, at *https://community.csagroup.org/login.jspa?referer=%252Fgroups%252Fansi-standards-view-access.* Once the rule takes effect, a read-only copy of the standards will be available for viewing, at no cost, at *https://community.csagroup.org/login.jspa?referer=%252Fgroups%252Fansi-standards-view-access.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* Interested parties can purchase a copy of the three ANSI standards from the Canadian Standards Association, 8501 East Pleasant Valley Road Independence, OH 44131–5516: 1–800–463–6727; *www.csagroup.org/store/.*

XII. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The proposed rule is not expected to have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

XIII. Preemption

Executive Order (E.O.) 12988, Civil Justice Reform (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996). The proposed regulation for gas furnaces and boilers is being promulgated under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that:

> whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.

15 U.S.C. 2075(a). Thus, the proposed rule would preempt non-identical state or local requirements for gas furnaces and boilers designed to protect against the same risk of injury, *i.e.,* risk of injury and death associated with CO production and leakage from residential gas furnaces and boilers.

States or political subdivisions of a state may apply for an exemption from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard (1) provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. 15 U.S.C. 2075(c).

XIV. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). Section 9(g)(1) of the CPSA states that a consumer product safety rule shall specify the date such rule is to take effect, and that the effective date must be at least 30 days after promulgation but cannot exceed 180 days from the date a rule is promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding.

The Commission preliminarily proposes an effective date of 18 months after publication of the final rule in the **Federal Register**. The rule would apply to gas furnaces and boilers manufactured after the effective date. The effective date of the proposed rule is based on staff's assessment that, to comply with the final rule, manufacturers would have to:

- Identify and establish contracts with suppliers of CO sensing or combustion control devices;
- redesign the impacted gas furnaces and boilers to integrate CO sensing or combustion control devices;
- work with gas control and control board manufacturers on redesigning gas controls and control boards to properly incorporate power and output signals from CO sensing or combustion control devices;
- conduct qualification testing and analysis of CO sensing or combustion control devices integrated into impacted appliances;
- retool manufacturing lines to allow for CO sensing or combustion control devices to be assembled into impacted appliances;
- incorporate the CO sensing or combustion control devices into existing quality control procedures;
- retrain assembly line staff on the redesigned gas appliances and retooled manufacturing lines;
- incorporate the CO sensing or combustion control devices into the user, maintenance, and installation instruction manuals of impacted appliances;
- develop new guidance for distributors and retail outlets for the impacted appliances; and

• test and certify of the new models to voluntary standards required in many jurisdictions to meet building codes.

A shorter effective date would likely result in manufacturers being unable to produce compliant products or produce enough products to meet their typical demand; resulting in a product shortage in the supply chain, consumers being denied their preferred product with a loss of utility and potentially an additional cost; and quality control issues.

We note the proposed 18-month effective date is consistent with the applicable voluntary standards for gas furnaces, boilers, and wall and floor furnaces (*i.e.,* ANSI Z21.13, ANSI Z21.47, and ANSI Z21.86, as well as all other ANSI Z21 standards), which typically allow for an effective date of 18 months after new standards provisions are approved. While the proposed 18-month effective date is a departure from the 180-day default effective date required by section 9(g)(1) of the CPSA, the Commission preliminarily concludes that there is good cause here to set the effective date at 18 months for manufacturers to ensure compliance with the proposed performance requirements of the rule based on the reasons discussed above. A detailed discussion of the justification for the recommended 18 month effective date is available in the Staff NPR Briefing Package. The Commission seeks comments on the effective date with specific information to support any argument that an effective date longer than the 180-day period specified in CPSA section 9(g)(1) is or is not justified by good cause, including for the reasons preliminarily identified above.

XV. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). 44 U.S.C. 3501–3520. We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for gathering certificate data and creating General Certificates of Conformity (GCC), the keeping and maintaining of records associated with the GCCs, and the disclosure of GCCs to distributers and retails.

CPSC particularly invites comments on: (1) whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC'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 reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and (5) estimated burden hours associated with label modification, including any alternative estimates.

Title: Safety Standard for Gas Furnaces and Boilers.

Description: The proposed rule would require each gas furnace and boiler to comply with performance requirements under which the appliance shuts off or modulates when CO levels reach specified amounts for a certain time duration.

Description of Respondents: Persons who manufacture or import gas furnaces and boilers. Staff estimates the burden of this collection of information as follows in Table 2:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Number of respondents	Frequency of responses	Total annual responses	Minutes per response	Total burden hours	Annual cost
GCC Creation	20	500	10,000	5	833	$63,525
Recordkeeping	20	500	10,000	1.25	208	7,005
Third Party Disclosure	20	500	10,000	15	2,500	84,200

Section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1), would require manufacturers to certify that their products conform to the proposed rule and issue a GCC. There are 20 known corporate entities supplying gas furnaces and boilers to the U.S. market. On average, each entity may issue 500 certificates for complying gas furnaces or boilers in the market. Each manufacturer or importer may issue 500 certificates for a total of 10,000 certificates (20 firms times 500 certificates per firm = 10,000 certificates). Staff treats each certificate issued as a new recordkeeping response so there is a total of 10,000 responses for GCC creation. The estimated time required to issue a GCC is estimated at about five minutes (although it often could be less). To comply with the CPSA, gas furnace and boiler manufacturers covered by the rule must subject their products to a reasonable testing program. Quality control and testing is usual and customary for gas furnace and boiler manufacturers, however creation (*i.e.,* recording of test results) may not be. Staff estimates that each firm may spend five minutes per certificate issued recording the results of a reasonable testing program. This would include the time taken to read the test results, create the testing record, and issue a certificate. Therefore, the estimated burden associated with issuance of GCCs is 833 hours (10,000 responses × 5 minutes per response = 50,000 minutes or 833 hours). Staff estimates the hourly compensation for the time required to issue GCCs is $76.26 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, Table 4, management, business, and financial occupations: *https://www.bls.gov/news.release/pdf/ecec.pdf*). Therefore, the estimated annual cost to industry associated with issuance of a GCC is $63,525 ($76.26 per hour × 833 hours).

We estimate for the purpose of this burden analysis that records supporting GCC creation, including testing records, would be maintained for a five-year period. Staff estimates another 10,000 recordkeeping responses, each one of which requires 1.25 minutes per year in routine recordkeeping. This adds up to 12,500 minutes or 208 hours. Staff estimates the hourly compensation for the time required to issue is $33.68 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, Table 4, office and administrative support occupations: *https://www.bls.gov/news.release/pdf/ecec.pdf*). Therefore, the estimated annual cost to industry associated with recordkeeping associated with GCCs is $7,005 ($33.68 per hour × 208 hours).

Section 14(g)(3) of the CPSA also requires that GCCs be disclosed to third party retailers and distributors. Staff estimates another 10,000 third party disclosure responses, each one of which

requires 15 minutes per year. This adds up to 150,000 minutes (10,000 responses × 15 minutes per response) or 2,500 hours. Staff uses an hourly compensation for the time required to disclose certificates to third parties of $33.68 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, Table 4, office and administrative support occupations: *https://www.bls.gov/news.release/pdf/ecec.pdf*). Therefore, the estimated annual cost to industry associated with third party disclosure of GCCs is $84,200 ($33.68 per hour × 2,500 hours). There are no operating, maintenance, or capital costs associated with the collection.

Based on this analysis, the proposed standard for gas furnaces and boilers would impose a total paperwork burden to industry of 4,374 hours (833 hours + 833 + 208 hours + 2,500 hours), at an estimated cost of $154,730 annually ($63,525 + $7,005 + $84,200). Existing gas furnace and boiler manufactures would incur these costs in the first year following the proposed rule's effective date. In subsequent years, costs could be less, depending on the number of new GCCs issued for gas furnaces and boilers. As required under the PRA (44 U.S.C. 3507(d)), CPSC has submitted the information collection requirements of this proposed rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by December 26, 2023, to the Office of Information and Regulatory Affairs, OMB as described under the **ADDRESSES** section of this notice.

XVI. Certification

Section 14(a)(1) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified with a GCC as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). A final rule would subject gas furnaces and boilers to this requirement.

XVII. Promulgation of a Final Rule

Section 9(d)(1) of the CPSA requires the Commission to promulgate a final consumer product safety rule within 60 days of publishing a proposed rule. Otherwise, the Commission must withdraw the proposed rule if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or is not in the public interest. However, the Commission can extend the 60-day period, for good cause shown, if it publishes the reasons for doing so in the **Federal Register**. 15 U.S.C. 2058(d)(1).

The Commission finds that there is good cause to extend the 60-day period for this rulemaking. Under both the APA and the CPSA, the Commission must provide an opportunity for interested parties to submit written comments on a proposed rule. 5 U.S.C. 553; 15 U.S.C. 2058(d)(2). The Commission is providing 60 days for interested parties to submit written comments. A shorter comment period may limit the quality and utility of information CPSC receives, particularly for areas where it seeks data and other detailed information that may take time for commenters to compile. Additionally, the CPSA requires the Commission to provide interested parties with an opportunity to make oral presentations of data, views, or arguments. 15 U.S.C. 2058. This may require time for the Commission to arrange a public meeting for this purpose and provide notice to interested parties in advance of that meeting. After receiving written and oral comments, CPSC staff must have time to review and evaluate those comments.

These factors make it impractical for the Commission to issue a final rule within 60 days of this proposed rule. Accordingly, the Commission finds that there is good cause to extend the 60-day period for promulgating the final rule after publication of the proposed rule.

XVIII. Request for Comments

We invite all interested persons to submit comments on all aspects of the proposed rule. The Commission particularly seeks comment on the following items:

- the CO concentration and associated time thresholds in the proposed performance requirements;
- the proposed fail safe provisions in the performance requirement;
- the efficacy of the proposed fail safe provisions and whether there is a more appropriate approach to address fail safe;
- should the proposed performance requirement include an audible alarm notification requirement that indicates when a gas furnace or boiler exceeds the proposed CO limits or when a CO sensor is no longer working properly;
- effort required to obtain sensors and information on sensors including the lifespan;
- effort required to redesign control systems;
- effort required to test prototypes;
- effort required to bring re-engineered appliances to production;
- costs associated with an effective date six months after publication of the rule;
- costs associated with an effective date 30 days after publication of the rule;
- costs associated with shipping and inventory of gas furnaces and boilers;
- costs associated with manufacturing gas furnaces and boilers, along with a description of the process including the timing and whether any firms have seasonal production;
- under the proposed stockpiling provision should zero-production months be averaged in to maintain a roughly constant level of supply for a seasonally produced product to avoid dramatic stockpiling if the manufacturer converted to constant production;
- effort required to incorporate sensors and/or combustion control systems in production;
- data or information on research and development and modifications to the production process the proposed rule would impose on manufacturers;
- data or information on price elasticity for gas furnaces or boilers;
- additional manufacturers and importers of gas furnaces and boilers that may meet the Small Business Administration (SBA) definition of a small business;
- information on importers of gas furnaces and gas boilers, specifically:
  - how many are imported;
  - how many different models each importer sells; and
  - what technologies those models are currently using (atmospheric venting, condensing, non-condensing, premix power burners, etc.); and
- information regarding the degree to which supplying firms are able to pass on increases in production and regulatory costs to importers.

XIX. Notice of Opportunity for Oral Presentation

Section 9 of the CPSA requires the Commission to provide interested parties ''an opportunity for the oral presentation of data, views, or arguments.'' 15 U.S.C. 2058(d)(2). The Commission must keep a transcript of such oral presentations. *Id.* Any person interested in making an oral presentation must contact the Commission, as described under the **DATES** and **ADDRESSES** section of this notice.

List of Subjects in 16 CFR Part 1408

Administrative practice and procedure, Consumer protection, Incorporation by reference, Gas furnaces and boilers.

■ For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding a new part to read as follows:

PART 1408—SAFETY STANDARD FOR RESIDENTAL GAS FURNACES AND BOILERS

Sec.

Authority: 15 U.S.C. 2056, 15 U.S.C. 2058, and 5 U.S.C. 553.

§ 1408.1 Scope, purpose, and effective date.

This part establishes performance requirements for residential gas furnaces, boilers, and wall and floor furnaces (gas furnaces and boilers) that are consumer products used to heat dwellings, including but not limited to, single family homes, townhomes, condominiums, and multifamily dwellings, as well as multi-family buildings such as apartments and condominiums. The purpose of these requirements is to reduce the occurrence of carbon monoxide-related deaths, injuries, and exposures associated with gas furnaces and boilers. All residential gas furnaces and boilers manufactured after [DATE 18 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] must meet the requirements of this part.

§ 1408.2 Definitions.

Gas Central Furnace means a gas-burning appliance that heats air by the transfer of heat of combustion through a heat exchanger and supplies heated air through ducts to spaces remote from or adjacent to the appliance location.

Gas Floor Furnace means a furnace suspended between the floor joists of the space being heated. A floor furnace provides direct heating of the room in which it is located and to adjacent rooms.

Gas Steam and Hot Water Boiler means a gas burning appliance that heats steam at a pressure not exceeding 15 psi (100 kPa), or hot water at a pressure not exceeding 160 psi (1100 kPa) and at a temperature not exceeding 250 °F (121 °C). The heated steam or water is pumped to spaces remote from or adjacent to the appliance location through piping to radiators, where the heat of combustion is transferred to heat the air around the radiator.

Gas Wall Furnace means a gas appliance installed within a wall that provides heated air directly to the room in which it is installed and to adjacent rooms through grilles.

§ 1408.3 Performance requirements for residential gas furnaces and boilers.

(a) General. All residential vented gas furnaces, boilers, wall furnaces, and floor furnaces must have a means to either directly or indirectly monitor the concentration of carbon monoxide (CO) produced during the combustion process (*i.e.,* ''CO emissions''), and shut down or modulate combustion to reduce average CO concentrations to below the CO levels for the durations of time specified in paragraph (b) of this section. If the average CO emissions reach or exceed the CO limits and time durations specified in paragraph (b), then the gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm. If average CO levels range between 200 and 299 ppm for 50 minutes, then the gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm. If average CO levels range between 300 and 399 ppm for 40 minutes, then the gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm. If average CO levels range between 400 and 499 ppm for 30 minutes, then the gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm. If average CO levels range from 500 ppm or higher for 15 minutes, then the gas furnace or boiler must either shut down or modulate combustion to reduce average CO emissions to below 150 ppm. Indirect monitoring and control of CO emissions can be accomplished by monitoring and controlling other combustion parameter(s) that accurately correlate to the production of CO. Examples of parameters that can serve as a proxy for CO production include carbon dioxide (CO_2), oxygen (O_2), the Gas/Air Ratio, and the flame ionization current produced by the burner flame.

(b) *Performance requirements for gas furnaces and boilers.* A gas furnace, boiler, wall furnace, or floor furnace must be equipped with a means to continuously monitor CO emission and must meet the requirements using one of the methods described in either paragraph (b)(1)(i) or paragraph (b)(2)(i) for the multipoint method or paragraph (b)(1)(ii) or (b)(2)(ii) for the single point method of this section when tested using the test method described in paragraph (d) of this section.

(1) Direct means to monitor CO emissions. (i) Multipoint method. A gas furnace, boiler, wall furnace, or floor furnace equipped with a means to directly monitor CO emissions, must either cause shut down of the gas furnace or boiler or cause modulation of the gas furnace or boiler combustion, in response to the following conditions within the gas furnace or boiler:

(A) average CO concentration is 500 ppm or higher for 15 minutes;

(B) average CO concentration between 400 ppm and 499 ppm for 30 minutes;

(C) average CO concentration between 300 ppm and 399 ppm for 40 minutes;

(D) average CO concentration between 200 ppm and 299 ppm for 50 minutes;

(E) average CO concentration between 150 and 199 ppm for 60 minutes.

(ii) Single point method. A manufacturer may use the single point method instead of the multipoint method described in paragraph (b)(1)(i) for a gas furnace, boiler, wall furnace, or floor furnace equipped with a means to directly monitor CO emissions; which must either cause shut down of the gas furnace or boiler or cause modulation of the gas furnace or boiler combustion, in response to the following conditions within the gas furnace or boiler:

(A) Average CO concentration of 150 ppm or higher for 15 minutes. Shutdown or modulation of the gas furnace or boiler must begin immediately after any of the conditions described in paragraphs (b)(1)(i)(A) through (E) are reached or the alternative condition described in paragraph (b)(1)(ii)(A) is reached. After modulation begins, the CO concentration within the gas furnace or boiler must be reduced to below 150 ppm within 15 minutes.

(B) [Reserved]

(2) Indirect means to monitor CO emissions. (i) Multipoint method. A gas furnace, boiler, wall furnace, or floor furnace equipped with an indirect means to monitor CO emissions, must either cause shut down of the gas furnace or boiler or cause modulation of combustion of the gas furnace or boiler, each in response to the combustion conditions that correlate to the following conditions within the gas furnace or boiler:

(A) average CO concentration is 500 ppm or higher for 15 minutes;

(B) average CO concentration between 400 ppm and 499 ppm for 30 minutes;

(C) average CO concentration between 300 ppm and 399 ppm for 40 minutes;

(D) average CO concentration between 200 ppm and 299 ppm for 50 minutes;

(E) average CO concentration between 150 and 199 ppm for 60 minutes.

(ii) Single Point method. A manufacturer may use the single point method instead of the multipoint method described in paragraph (b)(2)(i) for a gas furnace, boiler, wall furnace, or floor furnace equipped with a means to indirectly monitor CO emissions, which must either cause shut down of the gas furnace or boiler or cause modulation of combustion within the gas furnace or boiler, in response to the following condition within the gas furnace or boiler:

(A) Average CO concentration of 150 ppm or higher for 15 minutes. Shutdown or modulation of the gas furnace or boiler must begin immediately after any of the conditions described in paragraphs (b)(2)(i)(A) through (E) are reached or the alternative condition described in paragraph (b)(2)(ii)(A) is reached. After modulation begins, the CO concentration within the gas furnace or boiler must be reduced to below 150 ppm within 15 minutes.

(B) [Reserved]

(3) Fail Safe. During the life of the gas furnace or boiler, if a CO sensor, combustion sensor, combustion control system, or other device designed to meet these requirements fails to operate properly or at all, then the gas furnace or boiler must shutdown and restart after 15 minutes and repeat this cycle until the failed component is replaced. Consumers and service technicians must be notified of device failure by either a flashing light or other appropriate code on the gas furnace or boiler control board that corresponds to the device failure.

(c) *Test Configuration.* Gas furnace or boilers must be configured in the following manner for testing. Gas Furnaces, boilers, wall furnaces, and floor furnaces must each be set up with the burner and primary air adjusted in accordance with the provisions of the Combustion sections of the respective voluntary standards (section 5.8.1 of ANSI Z21.47–2021 for gas furnaces; section 5.5.1 of ANSI Z21.13–2022 for gas boilers; and sections 9.3.1, 11.2.1, and 13.3.1, of ANSI Z21.86–2016 for gas wall and floor furnaces). These tests must be conducted in an atmosphere having normal oxygen supply of approximately 20.94 percent. Burner and primary air adjustments must be made for furnaces, boilers, wall furnaces, and floor furnaces in accordance with the provisions of each respective standard (section 5.5.4 of ANSI Z21.47–2021 for gas furnaces; section 5.3.1 of ANSI Z21.13–2022 for gas boilers; and section 2.3.4 of ANSI Z21.86–16 for gas wall and floor furnaces). After adjustment, and with all parts of the furnace, boiler, wall furnace, or floor furnace at room temperature, the pilot(s), if provided, must be placed in operation and allowed to operate for a period of five minutes. The main burner(s) must then be placed in operation and the gas furnace or boiler operated for three minutes at normal inlet test pressure at which time a sample of the flue gases must be secured. Immediately upon securing the sample at normal inlet test pressure, the reduced inlet test pressure (section 5.5.1 of ANSI Z21.47:2021; section 5.3.1 of ANSI Z21.13–2022; and section 2.3.1 of ANSI Z21.86–16) must be applied and, following a purge period of at least two minutes, another sample of the flue gases must be secured. For atmospheric burner units, samples must be secured at a point preceding the inlet to the unit's draft hood or flue outlet where uniform samples can be obtained. The flue gas sample must be analyzed for carbon dioxide and carbon monoxide. The average concentration of carbon monoxide for the flue gas samples must not exceed 150 ppm in a sample of flue gases after 15 minutes.

(d)(1) Test Procedure. To test a furnace, boiler, wall furnace, or floor furnace to the performance requirements specified in paragraph (b) of this section, induce the production of CO or related combustion parameters, one or a combination of the following methods must be used:

(i) Progressively increase the gas control valve's outlet pressure until the unit produces a CO concentration of approximately 150 ppm ±10 ppm CO. For natural gas units, use a propane conversion kit to achieve the desired CO concentration if this was not accomplished by increasing the gas valve's outlet pressure. For propane units, use either option in paragraph (b)(2)(i)(B) or (C). If neither option results in a CO concentration of approximately 150 ppm, then use both options in paragraphs (b)(3)(i)(B) and (C). Once a CO concentration of at least 150 ppm is achieved, that condition must be maintained for 15 minutes.

(ii) Progressively block the exhaust vent or flue outlet until the unit produces approximately 150 ppm ±10 ppm CO. Disable the unit's blocked vent shutoff switch (BVSS) if necessary, in order to achieve the desired CO concentration. Once a CO concentration of approximately 150 ppm is achieved, that condition must be maintained for 15 minutes.

(iii) Reduce the fan speed of the inducer motor or premix power burner (for induced draft or premix power burner units only) by reducing the supply voltage to 85 percent of the gas furnace or boiler rating plate voltage until the unit produces a CO concentration of approximately 150 ppm ±10 ppm CO. An additional combustion sample must be secured with the gas furnace or boiler operating at normal inlet test pressure and with the supply voltage reduced to 85 percent of the gas furnace or boiler rating plate voltage. This sample must be secured 15 minutes after the furnace has operated at the reduced voltage. The input rating may vary from normal as a result of the voltage reduction. Once a CO concentration of approximately 150 ppm is achieved, that condition must be maintained for 15 minutes.

For gas furnaces and boilers that employ modulation (*e.g.,* using a Gas/Air Ratio Controller, an automatic step-rate control, or automatic modulating controls, etc.) the unit must immediately begin modulation to reduce the CO concentration to below 150 ppm. For gas furnaces and boilers that do not employ modulation, the unit must shut down.

(2) Time for shutoff using multipoint method or modulation. The time for the gas to the main burner(s) to be shut off or begin modulation by the device used to directly or indirectly monitor CO emissions must be:

(i) After 15 minutes at an average CO concentration of 500 ppm or more.

(ii) After 30 minutes at an average CO concentration of 400–499 ppm.

(iii) After 40 minutes at an average CO concentration of 300–399 ppm.

(iv) After 50 minutes at an average CO concentration of 200–299 ppm.

(v) After 60 minutes at an average CO concentration of 150–199 ppm.

(3) Time for shutoff using single point method or modulation. A manufacturer, instead of using the multipoint method describe in paragraph (d)(2) may use the following single point conditions and time to shut off the gas furnace or boiler or begin modulation in response to the following condition within the gas furnace or boiler:

(i) Average CO concentration of 150 ppm or higher for 15 minutes. Shutdown or modulation of the appliance shall begin immediately after any of the conditions described in paragraph (d)(2) is reached. After modulation begins, the CO concentration within the appliance shall be reduced to below 150 ppm within 15 minutes.

(ii) [Reserved]

§ 1408.4 Incorporation by reference.

Certain material is incorporated by reference into this part with the

approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7479; email *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/CFR/IBR-locations.html* or email *fr.inspection@nara.gov.* The following material may be obtained from the Canadian Standards Association, 8501 East Pleasant Valley Road, Independence, OH 44131–5516: 1–800–463–6727; *www.csagroup.org/store/:*

(a) ANSI Z21.13–2022, Standard: *Gas-fired low-pressure steam and hot water boilers,* published August 2022.

(b) ANSI Z21.47–2021, Standard: *Gas-fired central furnaces,* published May 2021.

(c) ANSI Z21.86–2016, Standard: *Vented gas-fired space heating appliances,* published January 2017.

§ 1408.5 Prohibited stockpiling.

(a) *Prohibited acts.* Manufacturers and importers of gas furnaces, boilers, wall furnaces, and floor furnaces shall not manufacture or import products that do not comply with the requirements of this part between [DATE OF PUBLICATION OF FINAL RULE] and [EFFECTIVE DATE OF FINAL RULE] at a rate greater than 106 percent of the base period in the first 12 months after promulgation of the rule, and 112.50 percent of the base period for the remaining six months until the effective date for the rule.

(b) *Base period.* The base period for gas furnaces, boilers, wall furnaces, and floor furnaces is the calendar month with the median manufacturing or import volume within the last 13 months immediately preceding the month of promulgation of the final rule.

Appendix A to Part 1408—Preliminary Findings Under the Consumer Product Safety Act

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3).

A. Degree and Nature of the Risk of Injury

The Commission proposes this rule to reduce the risk of death and injury associated with CO production and leakage from residential gas furnaces, boilers, wall furnaces, and floor furnaces. Between 2017 to 2019 (the most recent period for which data are complete), there were annually an estimated 21 CO deaths associated with residential gas furnaces and boilers. For the 20-year period 2000 through 2019, these products were associated with a total of 539 CO deaths. Between the years 2014 and 2018, 236 nonfatal injuries were reported through the National Electronic Injury Surveillance System (NEISS) related to CO leakages from gas furnaces and boilers. Staff used NEISS incidents and the Injury Cost Model to extrapolate and generate national estimates for injuries from CO leakages from gas furnaces and boilers with 30,587 nonfatal injuries from CO leakages from 2014 to 2018.

B. Number of Consumer Products Subject to the Rule

An estimated 70 firms manufacturer residential gas furnaces and boilers. When accounting for subsidiaries and multiple brands provided by the same company, 20 parent manufacturers have been identified. In 2020, there was an estimated 60.94 million total number of residential gas furnaces and boilers in use. In 2021 residential gas furnace sales were estimated to be 3.58 million units, and 0.30 million units for gas boilers.

C. Need of the Public for the Products and Probable Effect on Utility, Cost, and Availability of the Product

(1) Residential gas furnaces and boilers are fueled by natural gas or propane (gas) and are used to heat all categories of residential dwellings, including single family homes, townhomes, condominiums, and multifamily dwellings, as well as small-to medium-sized commercial dwellings. Because the rule is a performance standard that allows for the sale of compliant gas furnaces and boilers, it is not expected to have an impact on the utility of the product.

(2) The cost of compliance to address CO hazards include increased variable costs of producing furnaces and boilers with CO sensors and shutoff capabilities; one-time conversion costs of redesigning and modifying factory operations for installing CO sensors; increased maintenance costs of gas furnaces and boilers to consumers, and deadweight loss in the market caused by the increasing price due to regulation and the subsequent decline in sales. Staff performed a 30-year prospective cost assessment (2025–2054) on all four cost categories and estimated the total annualized cost from the proposed rule to be $602.27 million, discounted at three percent. Staff estimated the per-unit (of a gas furnace or boiler) costs from the proposed rule to be $158.11, discounted at three percent.

Dead weight loss refers to the lost producer and consumer surplus from reduced quantities of gas furnaces and boilers sold and used due to the rule-induced increases in manufacturer cost and retail price. Producer surplus represents the difference between the amount a producer is willing to sell a good or service for and the price they actually receive. Consumer surplus represents the benefit that consumers receive from purchasing a good or service at a price that is lower than their willingness to pay. For those units no longer produced due to the rule, suppliers lose out on the producer surplus associated with those units, and consumers lose out on the consumer surplus associated with those units.

In the first year, producer manufacturing costs are expected to increase by $22.08 per gas furnace causing a $70.44 per unit in higher retail costs to the consumer in the form of higher retail prices. Gas boiler manufacturing costs are expected to increase by $26.54 per unit causing an $87.59 in higher retail costs to the consumer. The resultant decrease in the number of gas furnaces and boilers sold and used is expected to generate a dead weight loss of about $1 million per year nationwide.

(3) Staff does not expect that the availability of gas furnaces and boilers will be substantially impacted by the rule. Staff estimates baseline (status quo) sales of 3.96 million units of gas furnaces and boilers in 2025 which in the absence of the rule, would grow to 4.72 million by 2054. With the promulgation of the rule staff expects gas furnace and boiler sales of 3.92 million units in 2025 would grow to 4.69 million units by 2054.

D. Any Means To Achieve the Objective of the Rule, While Minimizing Adverse Effects on Competition and Manufacturing

(1) The rule reduces CO hazards associated with residential gas furnaces and boilers while minimizing the effect on competition and manufacturing. Manufacturers can transfer some, or all, of the increased production cost to consumers through price increases. At the margins, some producers may exit the market because their increased marginal costs now exceed the increase in market price. Likewise, a very small fraction of consumers may be excluded from the market if the increased market price exceeds their personal price threshold for purchasing a gas furnace or boiler. However, the Commission did not find any information or assessment that would suggest significant changes to market competition or composition.

(2) The Commission considered alternatives to the rule to minimize impacts on competition and manufacturing including: (1) continuing to work and advocate for change through the voluntary standards process; (2) relying on the use of residential CO alarms; (3) continuing to conduct education and information campaigns; and (4) relying on recalls. The Commission determines that none of these alternatives would adequately reduce the risk of deaths and injuries associated with the CO hazards presented by residential gas furnaces and boilers.

E. The Rule (Including Its Effective Date) Is Reasonably Necessary To Eliminate or Reduce an Unreasonable Risk of Injury

Between 2000 and December 2019, incident data show 539 fatal incidents related to CO hazards associated with gas furnaces and boilers. The incident data show that these incidents continue to occur and are likely to increase because the existing ANSI voluntary standards do not have requirements that would adequately reduce

the CO hazard presented by gas furnaces and boilers and the market for gas furnaces and boilers is forecast to grow. The rule establishes performance requirements to address the risk of CO poisoning associated with residential gas furnaces and boilers. The effective date provides a reasonable amount of time for manufacturers to comply with the rule and produce products that prevent the CO hazard. Given the deaths and injuries associated with CO leakage from gas furnaces and boilers, the Commission finds that the rule and its effective date are necessary to address the unreasonable risk of injury associated with gas furnaces and boilers.

F. Public Interest

The rule addresses an unreasonable risk of death and injuries presented from CO hazards associated with gas furnaces and boilers. Adherence to the requirements of the rule would reduce deaths and injuries from CO poisoning associated with gas furnaces and boilers; thus, the rule is in the public interest.

G. Voluntary Standards

If a voluntary standard addressing the risk of injury has been adopted and implemented, then the Commission must find that the voluntary standard is not likely to eliminate or adequately reduce the risk of injury or substantial compliance with the voluntary standard is unlikely. The Commission determines that the relevant U.S. voluntary standards (ANSI Z21.13–2022, ANSI Z21.47–2021, and ANSI Z21.86–2016) do not contain performance requirements to protect against the known failure modes or conditions identified that have been associated with the production and leakage of CO into living spaces of U.S. residences resulting in numerous deaths and injuries, and thus do not adequately address the hazard of CO exposure from residential gas furnaces and boilers.

H. Reasonable Relationship of Benefits to Costs

The Commission determines the benefits expected from the rule bear a reasonable relationship to its costs. The rule significantly reduces the CO hazard associated with residential gas furnaces and boilers, and thereby reduces the societal costs of the resulting injuries and deaths. When costs are compared to benefits, the estimated costs of the rule are greater than the estimated benefits. Staff calculates net benefits (benefits less costs) to be −$245.74 million on annualized basis, discounted at three percent. The net benefits on per-unit basis are −$64.51, discounted at three percent. Alternatively, this can be described as the proposed rule being a net cost of −64.51 per gas furnace or boiler, which represents approximately three percent of the average price of a gas furnace or boiler. Overall, the proposed rule has a benefit-cost ratio of 0.59; in other words, for every $1 in cost of the proposed rule, there is a return of $0.59 in benefits from mitigated deaths and injuries. However, the rule is estimated to address 90–100 percent of deaths caused by the CO hazard associated with gas furnaces and boilers, resulting in potential total societal annualized benefits from the rule of $356.52 million, discounted at three percent. Staff conducted a sensitivity analysis that showed if by 2035 manufacturers were able to develop compliant gas furnaces and boilers with CO sensors that did not need replacement, and if the analysis took into account that a child's death is considered twice as costly as an adult death, the benefit-cost ratio would increase to 0.78.

I. Least-Burdensome Requirement That Would Adequately Reduce the Risk of Injury

The Commission considered four alternatives to the proposed rule: (1) continue to work and advocate for change through the voluntary standards process; (2) rely on the use of residential CO alarms; (3) continue to conduct education and information campaigns; and (4) rely on recalls. Although these alternatives may be less burdensome alternatives to the rule, the Commission determines that none of the alternatives would adequately reduce the risk of deaths and injuries associated with gas furnaces and boilers that is addressed by the rule.

Elina Lingappa,

Paralegal Specialist, Consumer Product Safety Commission.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1143]

Schedules of Controlled Substances: Temporary Placement of *N*-Desethyl Isotonitazene and *N*-Piperidinyl Etonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule two synthetic benzimidazole-opioid substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle these two specified substances.

DATES: October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: The notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order [1] (in the form of a temporary amendment) to add the following two substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, to schedule I under the Controlled Substances Act (CSA):

- *N*-ethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (commonly known as *N*-desethyl isotonitazene), and
- 2-(4-ethoxybenzyl)-5-nitro-1-(2-(piperidin-1-yl)ethyl)-1*H*-benzimidazole (commonly known as either *N*-piperidinyl etonitazene or etonitazepipne).

The temporary scheduling order will be published in the **Federal Register** on or after November 24, 2023.

Legal Authority

The CSA provides the Attorney General (as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100) with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act,

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to place a substance in schedule I of the CSA temporarily (*i.e.,* to issue a temporary scheduling order). 21 U.S.C. 811(h)(4). The Administrator transmitted the required notice to the Assistant Secretary for Health of HHS (Assistant Secretary),[2] by letter dated April 3, 2023, regarding *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene. The Assistant Secretary responded to this notice by letter dated May 11, 2023, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I. *N*-Desethyl isotonitazene and *N*-piperidinyl etonitazene currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these substances.

To find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): the substance's history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). This consideration includes any information indicating actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution of these substances. 21 U.S.C. 811(h)(3).

Substances meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I have high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Two Benzimidazole-Opioids: N-Desethyl Isotonitazene and N-Piperidinyl Etonitazene

The continued encounter of novel psychoactive substances (NPS) on the recreational drug market poses a threat to public safety. Following the class-wide scheduling of fentanyl-related substances, there has been an increase in the emergence of synthetic opioids that are not structurally related to fentanyl. Beginning in 2019, a new class of synthetic opioids known as benzimidazole-opioids, commonly referred to as ''nitazenes,'' emerged on the recreational drug market. This class of substances was first synthesized in the 1950s by CIBA Aktiengesellschaft in Switzerland, and it has a similar pharmacological profile to fentanyl, morphine, and other mu-opioid receptor agonists. Between August 2020 and April 2022, DEA temporarily controlled eight benzimidazole-opioids because they posed a threat to public safety. 87 FR 21556 (Apr. 12, 2022); 85 FR 51342 (Aug. 20, 2020). Recently, additional benzimidazole-opioids have been identified within the rapidly expanding class of ''nitazene'' compounds on the recreational drug market. *N*-Desethyl isotonitazene and *N*-piperidinyl etonitazene are some of the recently encountered ''nitazene'' synthetic opioids identified on the illicit drug market.

The continued trafficking and identification of benzimidazole-opioids in toxicology cases pose a significant threat to public health and safety. Adverse health effects associated with the misuse and abuse of synthetic opioids have led to devastating consequences including death. Preclinical pharmacology data demonstrate that *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene have pharmacological profiles similar to those of the potent benzimidazole-opioids etonitazene and isotonitazene, schedule I opioid substances. *N*-Desethyl isotonitazene, an active metabolite of isotonitazene, has been positively identified in postmortem cases that involved isotonitazene. *N*-Piperidinyl etonitazene has been positively identified in at least three toxicology cases. As the United States continues to experience a high number of opioid-involved overdoses and mortalities, the introduction of new designer opioids further exacerbates the current opioid epidemic.

Available data and information for *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene, summarized below, indicate that these substances have high potentials for abuse, no currently accepted medical uses in treatment in the United States, and a lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–1143.

Factor 4. History and Current Pattern of Abuse

In the late 1950s, pharmaceutical research laboratories of the Swiss chemical company CIBA Aktiengesellschaft synthesized a group of structurally unique benzimidazole derivatives with analgesic properties; however, the research effort did not produce any medically approved analgesic products. These benzimidazole derivatives include schedule I substances, such as synthetic opioids clonitazene, etonitazene, and isotonitazene.

Since 2019, there has been an emergence of nitazene compounds on the illicit drug market, which have been positively identified in numerous cases of fatal overdose events. In August 2020, isotonitazene was placed in schedule I of the CSA (85 FR 51342). Subsequently, seven additional benzimidazole-opioids[3] have been placed in schedule I of the CSA (87 FR 21556).

Recently, two additional benzimidazole-opioids have emerged on the illicit drug market. Law enforcement officers have encountered *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene in several solid forms (*e.g.,* powder and tablets). These substances are not approved pharmaceutical products and are not approved for medical use anywhere in the world. The Assistant Secretary in a letter to DEA dated May 11, 2023, stated that there are no FDA-approved NDAs or INDs for *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene in the United States; hence, there are no legitimate channels for these substances as marketed drug products.

The appearance of benzimidazole-opioids on the illicit drug market is similar to other designer opioid drugs that are trafficked for their psychoactive effects. These substances are likely to be abused in the same manner as schedule I opioids, such as etonitazene, isotonitazene, and heroin.

In 2022, *N*-desethyl isotonitazene was identified in counterfeit tablets in the United States and United Kingdom. Recent reporting by Center for Forensic

[3] Butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene, and protonitazene

Science Research and Education (CFSRE) indicates that in the United States, *N*-desethyl isotonitazene was identified in counterfeit oxycodone round blue tablets in Florida.[4] Further, in December 2022, *N*-desethyl isotonitazene was identified in samples called ''dope'' in the Philadelphia drug supply. *N*-Desethyl isotonitazene was also co-identified in ''dope'' samples containing xylazine, fentanyl, *para*-fluorofentanyl, and designer benzodiazepines (*e.g.,* flubromazepam and bromazolam).

In 2021, *N*-piperidinyl etonitazene emerged on the illicit synthetic drug market, as evidenced by its identification in toxicological analysis of biological samples.[5] In addition, there have been encounters of *N*-piperidinyl etonitazene in Europe. As reported in January 2022 by the European Monitoring Center for Drugs and Drug Addiction (EMCDDA), the European Union Early Warning System Network identified *N*-piperidinyl etonitazene in Germany in October 2021. As of January 23, 2023, a total of four European countries have reported identifications of *N*-piperidinyl etonitazene in powder form to the EMCDDA.[6]

Factor 5. Scope, Duration and Significance of Abuse

N-Desethyl isotonitazene and *N*-piperidinyl etonitazene, similar to etonitazene and isotonitazene (schedule I substances), have been described as potent synthetic opioids, and evidence suggests they are abused for their opioidergic effects. The abuse of these benzimidazole-opioids, similar to other synthetic opioids, has resulted in serious adverse health effects. Between October 2019 and January 2020, *N*-desethyl isotonitazene was positively identified in 13 postmortem samples and 64 driving-under-the-influence-of-drugs (DUID) cases involving isotonitazene in the United States. Although, *N*-desethyl isotonitazene has only been identified as a metabolite of isotonitazene in toxicology cases, the pharmacological profile of this substance demonstrates it is a highly potent synthetic opioid similar to etonitazene, isotonitazene, and fentanyl. As such, the identification of this substance as a parent drug in the recreational drug market is worrisome.

Data from law enforcement suggest that *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene are being abused in the United States as recreational drugs.[7] Since 2022, there have been three encounters reported to DEA's National Forensic Laboratory Information System (NFLIS)-Drug[8] (Federal, State, and local laboratories) database pertaining to the trafficking, distribution, and abuse of *N*-desethyl isotonitazene. These three encounters of *N*-desethyl isotonitazene were reported to NFLIS-Drug from two states: Florida (2) and Kansas (1).

Based on information collected from NFLIS-Drug, *N*-desethyl isotonitazene was identified in tablet form or as residue. Reporting from CFSRE show that *N*-desethyl isotonitazene was identified in a counterfeit oxycodone tablet in Florida,[9] suggestive that it might be presented as a substitute for heroin or fentanyl and likely abused in the same manner as either of those substances.

The lack of identification of *N*-piperidinyl etonitazene in NFLIS-Drug may be due to the rapid appearance of these benzimidazole-opioids and under reporting as forensic laboratories try to secure reference standards for this substance. However, *N*-piperidinyl etonitazene has been positively identified in toxicology cases in the United States and encountered by law enforcement in Europe.

The population likely to abuse these benzimidazole-opioids appears to be the same as those abusing prescription opioid analgesics, fentanyl, and other synthetic drugs. This is evidenced by the types of other drugs co-identified in biological samples and law enforcement encounters. Because abusers of *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well-characterized. According to the most recent data from the National Survey on Drug Use and Health (NSDUH),[10] as of 2021, an estimated 9.2 million people aged 12 years or older misused opioids in the past year, including 8.7 million prescription pain reliever misusers and 1.1 million heroin users. In 2021, an estimated 5.6 million people had an opioid use disorder in the past year, which included 5.0 million people with a prescription pain reliever use disorder and 1.0 million people with heroin use disorder. This population abusing opioids is likely to be at risk of abusing *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene. Individuals who initiate (*i.e.,* use a drug for the first time) use of these benzimidazole-opioids are likely to be at risk of developing substance use disorder, overdose, and/or death, similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.). Law enforcement and toxicology reports demonstrate that *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene are being illicitly distributed and abused.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids on the illicit drug market. Data obtained from pre-clinical studies demonstrate that *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene exhibit pharmacological profiles similar to that of etonitazene, isotonitazene, and other mu-opioid receptor agonists. These two

[4] CFSRE NPS Discovery Public Alert 2023. Case Example—*N*-desethyl isotonitazene. January 2023.

[5] A partnership between the American College of Medical Toxicology (ACMT) and the Center for Forensic Science Research and Education (CFSRE) was established to comprehensively assess the role and prevalence of synthetic opioids and other drugs among suspected overdose events in the United States. CFSRE NPS Monograph. *N*-Piperidinyl etonitazene. November 22, 2021.

[6] Email communication with EMCDDA dated January 23, 2023.

[7] While law enforcement data are not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332 (Dec. 12, 2011).

[8] NFLIS-Drug represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS-Drug, is currently 98.5 percent. NFLIS-Drug includes drug chemistry results from completed analyses only. While NFLIS-Drug data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332. NFLIS-Drug data was queried on January 19, 2023.

[9] CFSRE NPS Discovery Public Alert January 2023. Accessed January 25, 2023.

[10] NSDUH, formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year, and past month abuse or dependence. The 2021 NSDUH annual report is available at Key Substance Use and Mental Health Indicators in the United States: Results from the 2021 National Survey on Drug Use and Health (*samhsa.gov*) (last accessed January 24, 2023).

benzimidazole-opioids bind to and act as an agonist at the μ-opioid receptors. It is well established that substances that act as mu-opioid receptor agonists have a high potential for addiction and can induce dose-dependent respiratory depression.

Consistent with any mu-opioid receptor agonist, the potential health and safety risks for users of *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene are high. *N*-Desethyl isotonitazene and *N*-piperidinyl etonitazene have been positively identified in toxicology cases. The public health risks attendant to the abuse of mu-opioid receptor agonists are well established. These risks include large numbers of drug treatment admissions, emergency department visits, and fatal overdoses. According to the Centers for Disease Control and Prevention (CDC), opioids, mainly synthetic opioids other than methadone, are predominantly responsible for drug overdose deaths in recent years. According to CDC provisional data, synthetic opioid-related overdose deaths in the United States increased from 57,834 in 2020 to 71,238 in 2021.[11] Overdose deaths involving opioids increased from an estimated 70,029 in 2020, to 80,816 in 2021. In 2021, according to Drug Abuse Warning Network (DAWN), preliminary findings indicate 1.03 million drug-related emergency department visits involved opioids (fentanyl, heroin, and other opioid pain medications taken alone or in combination with other opioids and/or other drugs).[12]

N-Piperidinyl etonitazene was detected in suspected opioid overdose cases in three patients from New Jersey over a period of three days in July 2021. Of those patients, two reported the use of cocaine; one reported the use of heroin and alprazolam. Similarly, according to a 2021 CFSRE report, *N*-piperidinyl etonitazene was co-identified with fentanyl in two cases and *para*-fluorofentanyl in one other case.[13]

Between October 2019 and January 2020, *N*-desethyl isotonitazene, an active metabolite of isotonitazene was identified in numerous toxicology cases involving isotonitazene. In DUID cases, *N*-desethyl isotonitazene was present in 64 samples containing isotonitazene and was found with isotonitazene in 13 postmortem samples. Although, *N*-desethyl isotonitazene was only identified as a metabolite of isotonitazene in these cases, the pharmacological profile of this substance demonstrate that it is a highly potent synthetic opioid similar to etonitazene, isotonitazene, and fentanyl. As such, the identification of this substance as a parent drug in the recreational drug market is worrisome.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene pose imminent hazards to public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I must have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene indicate that these substances meet the three statutory criteria. As required by 21 U.S.C. 811(h)(4), the Administrator transmitted to the Assistant Secretary, via letter dated April 3, 2023, notice of her intent to place *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene in schedule I on a temporary basis. HHS had no objection to the temporary placement of these substances in schedule I.

Conclusion

This Notice of Intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily schedule *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene in schedule I of the CSA, and finds that placement of these substances in schedule I is necessary to avoid an imminent hazard to the public safety.

The temporary placement of *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before November 24, 2023. Because the Administrator hereby finds this temporary scheduling order necessary to avoid an imminent hazard to the public safety, it will take effect on the date the order is published in the **Federal Register** and remain in effect for two years, with a possible extension of one year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). The Administrator intends to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon the temporary order's publication, *N*-desethyl isotonitazene and *N*-piperidinyl etonitazene will then be subject to the CSA's schedule I regulatory controls and to administrative, civil, and criminal sanctions applicable to their manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession.

The CSA sets forth specific criteria for scheduling drugs or other substances. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties appropriate process and the government any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Analyses

The CSA provides for expedited temporary scheduling actions where necessary to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h)(1), the Administrator, as delegated by the Attorney General, may, by order, temporarily place substances in schedule I. Such orders may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to

[11] 12 Month-ending August 2022 Provisional Number of Drug Overdose Deaths. Reported provisional data as of January 4, 2023. *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.* Accessed January 24, 2023.

[12] DAWN. Preliminary Findings from Drug-Related Emergency Department Visits, 2021. Preliminary Findings from Drug-Related Emergency Department Visits, 2021 (*samhsa.gov*). Accessed January 25, 2023.

[13] NPS Discovery Program at the Center for Forensic Science Research and Education: Monograph. *N*-Piperidinyl etonitazene Toxicology Analytical Report. November 22, 2021.

issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary, as delegated by the Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement to publish in the **Federal Register** a Notice of Intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this Notice of Intent. The APA expressly differentiates between orders and rules, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making.*'' 5 U.S.C. 551(6) (emphasis added). This contrasts with permanent scheduling actions, which are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' and final decisions that conclude the scheduling process and are subject to judicial review. 21 U.S.C. 811(a) and 877. The specific language chosen by Congress indicates its intent that DEA issue *orders* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator (as delegated by the Attorney General) to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in section 811(h)(1), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

Even assuming that this Notice of Intent is subject to section 553 of the APA, the Administrator finds that there is good cause to forgo its notice-and-comment requirements, as any further delays in the process for issuing temporary scheduling orders would be impracticable and contrary to the public interest given the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notices that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. As discussed above, DEA is issuing this notice of intent pursuant to DEA's authority to issue a temporary scheduling order. 21 U.S.C. 811(h)(1). Therefore, in this instance, since DEA believes this temporary scheduling action is not a ''rule,'' it is not subject to the requirements of the Regulatory Flexibility Act when issuing this temporary action.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866, sec. 3(f), as amended by E.O. 14094, sec. 1(b), provides the definition of a ''significant regulatory action,'' requiring review by the Office of Management and Budget. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(62) and (63) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

* * * * * * *	
(62) *N*-ethyl-2-(2-(4-isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other name: *N*-desethyl isotonitazene)	9760
(63) 2-(4-ethoxybenzyl)-5-nitro-1-(2-(piperidin-1-yl)ethyl)-1*H*-benzimidazole, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other names: *N*-piperidinyl etonitazene; etonitazepipne)	9761

Signing Authority

This document of the Drug Enforcement Administration was signed on October 16, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–23379 Filed 10–24–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR–6388–P–01]

RIN 2502–AJ70

Modernizing the Delivery of Housing Counseling Services

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This proposed rule would update HUD's regulations that require participating agencies to provide in-person counseling to clients that prefer this format to reflect advances in technology, align with client engagement preferences, and preserve consumer protections. The proposed rule would amend HUD's regulations to allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that choose not to provide in-person services would be required to refer clients to local providers that provide such services, when requested.

DATES: *Comment Due Date:* December 26, 2023.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through *www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (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 all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Valdez, Senior Housing Program Specialist, Department of Housing and Urban Development, 1331 Lamar St., Suite 550, Houston, TX 77002, telephone 713–718–3178 (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:

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) authorizes HUD's Housing Counseling program. Section 106(a)(1)(iii) authorizes HUD to provide or contract with organizations to provide ''counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of homeownership.'' Section 106(a)(2) authorizes HUD to provide counseling directly or to enter into contracts with, or make grants to, and provide other types of assistance to eligible private or public organizations (including grassroots, faith-based, and other community-based organizations) with special competence and knowledge in providing housing counseling to low- and moderate-income families.

On September 28, 2007, HUD published a final rule titled, ''Housing Counseling Program,'' at 72 FR 55637, which established regulations for HUD's Housing Counseling program, including 24 CFR 214.103(l), which governs requirements for housing counseling facilities, and 24 CFR 214.300, which governs basic requirements for counseling services including the setting and format for their provision. HUD's Housing Counseling program regulations have not been amended since they were established in the 2007 final rule.

Section 214.300(a)(3) requires agencies that provide housing counseling services to provide in-person counseling services at one of the agency's facilities or an alternate location to clients that prefer that format. When this requirement was adopted, housing counseling and education were primarily conducted locally, and the conventional wisdom was that in-person service was the most effective service delivery method. In 2020, due to ongoing public health concerns around the spread of Coronavirus Disease 2019 (COVID–19), a Temporary Partial Waiver of 24 CFR 214.300(a)(3), *In-Person Housing Counseling Requirement,* was issued and remains in effect through December 31, 2023. The waiver allows housing counseling agencies to utilize alternative methods to conduct housing counseling and education with clients in lieu of meeting in-person. Based on feedback received during meetings with stakeholders such as the Housing Counseling Federal Advisory Committee, HUD has determined that these alternative methods are more practical, cost-effective, and accessible, and have not led to adverse compliance issues or negative financial impacts. When the waiver expires, absent rulemaking to amend HUD's regulations, participating agencies will continue to be required to provide in-person counseling services to clients.

Today, fewer clients choose in-person counseling. Consumer preference has shifted toward alternative, virtual methods of service delivery as clients often view in-person delivery as inconvenient and more burdensome when considering costs like childcare and transportation necessary to attend.[1]

[1] Long Term Impact Report: The HUD First Time Homebuyer Education and Counseling Demonstration, June 2021, p. 64, available at: *https://www.huduser.gov/portal//portal/sites/default/files/pdf/Long-Term-Impact-Report-HUD-First-Time-Homebuyer-Education-Counseling-Demonstration.pdf.*

Almost two-thirds of research participants in a recent study conducted by HUD chose online education and telephonic counseling over in-person delivery.[2] Even when clients express a preference for in-person services, they initiate those services at a lower rate than do people who prefer and subsequently take up remote services.[3] Increasing virtual methods of delivery can increase accessibility for those who have difficulty accessing in-person services due to linguistic, physical, or other logistical barriers.[4] Moreover, participating agencies that maintain multiple facilities incur greater burdens and costs even as demand for in-person counseling continues to decline.

This proposed rule aims to modernize the current regulations to reflect advances in technology, to align with client engagement preferences, and to preserve consumer protections. The existing regulations also contain guardrails that will continue to mitigate the risk that some participating agencies may want to use virtual tools to expand their geographic scope but be unfamiliar with an area and its resources, thereby failing to provide quality counseling and services. Regulations will continue to require that participating agencies must have functioned for at least a year in the geographical area set forth in the work plan. Further, housing counselors must possess a working knowledge of state and local housing programs available in the community. These provisions ensure that participating agencies demonstrate knowledge and a connection to the community they serve, whether they choose to do so by providing virtual, in-person, or hybrid services.

II. This Proposed Rule

Currently, 24 CFR 214.300(a)(3) requires, among other things, participating agencies to provide in-person counseling to clients that prefer this format. HUD's proposed rule would allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that choose not to provide in-person services will be required to refer clients to local providers that provide such services, when requested.

HUD's existing regulations at § 214.103(l) require participating agencies to maintain facilities (*i.e.,* physical office space) that have a clearly identified office, with space available for the provision of housing counseling services, and provide privacy for in-person counseling. The proposed rule would provide that the participating agencies may maintain one facility and may not provide in-person housing counseling. This would help to reduce the costs of providing in-person housing counseling, but would not modify the existing requirements that participating agencies possess knowledge of the local housing market, establish working relationships with private and public community resources, and have functioned for at least a year in the geographical areas set forth in the participating agencies' work plans, all of which serve to demonstrate the agency maintains a sufficient community base.

A paragraph-by-paragraph summarized explanation and description of the proposed changes to 24 CFR part 214 are outlined immediately below.

Proposed 24 CFR 214.103(l)

HUD proposes to revise the language of paragraph (l), to modernize the requirements for maintaining a facility. HUD's proposed paragraph (l) would provide that a participating agency maintain one or more facilities. All facilities must have an identified, private space available for the provision of counseling services, whether those services are in-person or virtual.

Proposed 24 CFR 214.300(a)(3)

HUD proposes to revise the language of § 214.300(a)(3) to modernize the way housing counseling agencies provide housing counseling services. Rather than requiring that counseling services take place in-person, under this proposal, they could take place at a facility or at an alternate location or could be done via telephone, or via collaborative online software. Paragraph (3) would specify that all housing counseling agencies that do not provide in-person counseling services must refer clients to agencies that provide in-person counseling services upon a client's request.

Proposed 24 CFR 214.300(a)(4)

HUD proposes to add a new § 214.300(a)(4) that provides cross-references emphasizing that all housing counseling agencies must continue to meet requirements for approval as a counseling agency regardless of the setting or format of housing counseling services, including having functioned for at least one year in the geographical area(s) the agency identified in its housing counseling work plan, having sufficient resources to implement that proposed work plan, and being able to demonstrate knowledge of local housing markets and community resources.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter referred to as the ''Modernizing E.O.'') amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

The proposed rule allows counseling agencies to provide services through virtual methods of service delivery and to refer clients who prefer in-person counseling to other agencies that offer that service. HUD is not changing other requirements, for example the requirement that participating agencies demonstrate knowledge and a connection to the community they serve, and comply with state and local laws in each geographic area in which the participating agency operates. This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866, and is not an economically significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The changes described in this proposed rule would modernize the regulations governing HUD's Housing Counseling Program to

[2] Id. at p. 16.

[3] Id. at p. 86, footnote 86.

[4] Id. at p. 66.

allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that do not provide in-person services would be required to refer clients to local providers that provide such services, when requested. The proposed rule would help reduce the costs of maintaining multiple physical locations, instead shifting emphasis to demonstrating knowledge of the local housing market and community resources and whether a housing counseling agency has established a sufficient community base to operate in the area covered by its work plan. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule will not impose any Federal mandates on any State, local, or Tribal Governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control numbers 2502–0574 and 2502–0614.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Grant programs-housing and community development; Loan program-housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR part 214 as follows:

PART 214—HOUSING COUNSELING PROGRAM

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d).

■ 2. Revise § 214.103(l) to read as follows:

§ 214.103 Approval Criteria.

* * * * *

(l) *Facilities.* All participating agencies must maintain at least one facility. All facilities must meet the following criteria:

(1) Have a clearly identified space available for the provision of housing counseling services;

(2) Provide privacy for counseling services and confidentiality of client records; and

(3) Provide accessibility features or make alternative accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

■ 3. In § 214.300:

■ a. Revise paragraph (a)(3);

■ b. Redesignate paragraphs (a)(4) through (9) as paragraphs (5) through (10); and

■ c. Add new paragraph (a)(4).

The additions and revisions to read as follows:

§ 214.300 Counseling Services.

(a) * * *

(3) Counseling may take place at the housing counseling agency facility or at an alternate location, and may be conducted by telephone, or via collaborative online software. Agencies must ensure that any telephonic or collaborative online software, or any form of counseling, is accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) All agencies participating in HUD's Housing Counseling program must, upon a client's request, refer clients to participating agencies that provide in-person counseling services in accordance with 24 CFR 214.303(e).

(4) Regardless of setting or format, all participating agencies must continue to meet the requirements of 24 CFR 214.103(d), 214.103(g), and 214.103(h).

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2023–23332 Filed 10–24–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[REG–122793–19]

RIN 1545–BP71

Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document extends the comment period for a notice of

proposed rulemaking (REG–122793–19) that was published in the **Federal Register** on Tuesday, August 29, 2023. The proposed regulations relate to information reporting, the determination of amount realized and basis, and backup withholding, for certain digital asset sales and exchanges.

DATES: The comment period for written or electronic comments for the notice of proposed rulemaking published on August 29, 2023 (88 FR 59576) is extended from October 30, 2023, to November 13, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–122793–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. Send paper submissions to: CC:PA:01:PR (REG–122793–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:01:PR (REG–122793–19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under sections 1001 and 1012, Kyle Walker, (202) 317–4718, or Harith Razaa, (202) 317–7006, of the Office of the Associate Chief Counsel (Income Tax and Accounting); concerning the international sections of the proposed regulations under sections 3406 and 6045, John Sweeney or Alan Williams of the Office of the Associate Chief Counsel (International) at (202) 317–6933, and concerning the remainder of the proposed regulations under sections 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722, Roseann Cutrone of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317–5436 (not toll-free numbers). Concerning submissions of comments and requests to participate in the public hearing, Vivian Hayes at *publichearings@irs.gov* (preferred) or at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and request for comments that appeared in the **Federal Register** on Tuesday, August 29, 2023 (88 FR 59576) announced that written or electronic comments must be received by October 30, 2023. Due to strong public interest, the due date to receive comments has been extended to Monday, November 13, 2023. The public hearing has not been extended and is still scheduled for November 7, 2023, at 10 a.m. ET. If the number of requests to speak at the hearing exceeds the number that can be accommodated in one day, a second public hearing date for this proposed regulation will be held on November 8, 2023. Requests to speak at the public hearing must be made by email to *publichearings@irs.gov* and still must be received by October 30, 2023. Persons who wish to present oral comments at the public hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic, not to exceed ten minutes in total, by October 30, 2023.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 2023–23624 Filed 10–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2023–OS–0098]

RIN 0790–AL66

Privacy Act of 1974; Implementation

AGENCY: Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (OATSD(PCLT)), Department of Defense.

ACTION: Proposed rule.

SUMMARY: The OATSD(PCLT) is giving notice of a proposed rule making for a new component system of records pursuant to the Privacy Act of 1974 for the Army Safety Management Program Records (ASMPR), A0385–1 DAS. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act to protect the identity of confidential sources in reports prepared during accidents, mishaps, safety inspections, and workplace hazards investigations.

DATES: Send comments on or before December 26, 2023.

ADDRESSES: You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

* *Federal Rulemaking Portal: https://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, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of the Army is establishing a new system of records titled Army Safety Management Program Records (ASMPR), A0385–1 DAS. This system of records supports the prevention and management of injuries and illnesses due to work-related activities, and reduces its adverse impact on operational readiness. The system maintains records about individuals who suffer work-related injuries or illness caused by an accident, mishap, or hazard during work-related activities while on or off a DoD worksite, where there is a nexus to Army personnel, activities, or facilities/equipment, and/or individuals found to have contributed to the accident, mishap, or hazard.

II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process pursuant to 5 U.S.C. 553(b)(1)–(3), (c), and (e). This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider

before the issuance of a final rule implementing the exemption.

The Department of the Army proposes to modify 32 CFR 310.15 to add a new Privacy Act exemption rule for A0385–1 DAS, ''Army Safety Management Program Records (ASMPR),'' and to exempt portions of this system of records from certain provisions of the Privacy Act because some records may contain investigatory material compiled for law enforcement purposes within the scope of 5 U.S.C. 552a(k)(2), other than material within the scope of subsection (j)(2), which describes certain material related to the enforcement of criminal laws maintained by principal-function criminal law enforcement agencies. The Department of the Army therefore is proposing to claim an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent, among other harms, the identification of actual or potential subjects of investigation and/or sources of investigative information and to avoid frustrating the underlying law enforcement purpose for which the records were collected. Records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. A notice of a new system of records for A0385–1 DAS, Army Safety Management Program Records (ASMPR), is also published in this issue of the **Federal Register**.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rulemaking is not a significant regulatory action under these Executive orders.

Congressional Review Act (5 U.S.C. 804(2))

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. DoD will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rulemaking is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532(a)) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rulemaking will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rulemaking is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rulemaking is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rulemaking does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that has federalism implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute, or has federalism implications and preempts State law. This rulemaking will not have a substantial effect on State and local governments.

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rulemaking will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, the Department of Defense proposes to amend 32 CFR part 310 as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 310.15 is amended by adding paragraph (g)(36) to read as follows:

§ 310.15 Department of the Army exemptions.

* * * * *

(g) * * *

(36) *System identifier and name.* A0385–1 DAS, ''Army Safety Management Program Records (ASMPR).''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a (c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a (k)(2).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2)—Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom the subject might disclose the records or accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation by allowing the subject to tamper with witnesses or evidence, and to avoid detection or apprehension, which may undermine the entire investigatory process; or reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources, and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (d)(3), and (d)(4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2). Accordingly, exemptions from subsections (d)(3), and (d)(4) areclaimed pursuant to (k)(2).

(C) *Subsection (e)(1).* In the collection of information for investigatory purposes it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary determinations. Accordingly, application of exemption (k)(2) may be necessary.

(D) *Subsection (e)(4)(G) and (H).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(E) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemption (k)(2) may be necessary.

(F) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemption (k)(2) may be necessary.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: October 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–23299 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

LEGAL SERVICES CORPORATION

45 CFR Part 1638

Restriction on Solicitation

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the Legal Services Corporation (LSC or Corporation) regulation prohibiting solicitation of clients. LSC proposes to add definitions for ''communicate'' and ''communication,'' revise the existing text to make language more active, and clarify how recipients may interact with client-eligible individuals. The main goal of these revisions is to formalize the interpretations that the Office of Legal Affairs has issued over the past several years, making clear that recipients may inform client eligible individuals about their rights and responsibilities and provide them with information about the recipient's intake process, as well as how recipients may relay that information without violating either LSC's Fiscal Year 1996 appropriations statute or LSC's regulations.

DATES: Comments must be submitted by December 26, 2023.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Comments on Revisions to Part 1638'' in the subject line of the message.
- *Mail:* Elijah Johnson, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1638 Rulemaking.
- *Hand Delivery/Courier:* Elijah Johnson, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1638 Rulemaking.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Elijah Johnson, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1638 (phone), or *johnsone@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 1996, Congress passed the appropriations act for Fiscal Year 1996. Public Law 104–134, 110 Stat. 1321. Through this statute, Congress enacted a series of restrictions applicable to LSC grant recipients' activities. One of the restrictions was section 504(a)(18), which states that grant recipients

> will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action, and will not refer such nonattorney to another person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Corporation[.]

Public Law 104–134, 110 Stat. 1321, 1321–56.

On May 19, 1996, the Operations and Regulations Committee of the LSC Board requested LSC staff to prepare an interim rule to implement section 504(a)(18), and in April 1997, LSC promulgated part 1638. Consistent with section 504(a)(18), LSC's rule prohibited a grant recipient from representing an individual who had not sought legal advice from the grant recipient but was advised to seek legal representation or take legal action by the grant recipient. Part 1638 also prohibits grant recipients who have given in-person unsolicited advice to an individual from referring the individual receiving the advice to

another LSC grant recipient. *Id.* Finally, LSC included language in part 1638 stating that providing legal information, including information about the availability of counsel and a grant recipient's intake procedures, are permissible activities. 45 CFR 1638.4(a).

The broad definition of ''in-person'' may restrict more conduct than Congress intended when it enacted the prohibition on client solicitation. Section 504(a)(18) applies only to ''in-person advice.'' It does not mention ''personal encounters via other means of communication,'' which part 1638 does. 45 CFR 1638.2(a). Congress appears to have based section 504(a)(18) on ABA Model Rule 7.3, which generally prohibits ''in-person, live telephone, or real-time electronic communications.'' Model Rule 7.3 also prohibits solicitation through ''written, recorded or electronic communications,'' but only when such communications are abusive. Thus, part 1638's inclusion of ''a personal letter'' in the definition of ''in-person'' goes beyond the statutory language of section 504(a)(18) and the use of the same term by ABA Model Rule 7.3. The ABA updated Rule 7.3 in 2013. The changes, among other things, added electronic communications and reinforced the distinction between in-person contacts and written contacts (an electronic contact is in the same category as an ''in-person'' contact only when it is a ''real-time electronic contact.'').

The regulation's existing language has caused grantees to question whether they can provide information about the individuals' legal rights and the availability of legal assistance through texts, phone calls, and in-person contacts at court clinics. Over the years, OLA has received multiple inquiries from grant recipients and other stakeholders about what proposed outreach activities are permissible under part 1638. Some of the examples include:

- sending text messages explaining defendants' rights to unrepresented individuals in eviction cases;
- informing individuals of the availability of legal assistance via mailings and text messages; and
- individuals approaching grant recipient attorneys at court-based self-help clinics.

In July 2003, OLA published an advisory opinion answering a question from the Northwest Justice Project (''NJP''). NJP asked whether they could hand out informational brochures to individuals in the courthouse as part of their administration of the Housing Justice Program (''HJP''). The HJP provided same-day advice and representation from volunteer attorneys to LSC-eligible clients in eviction proceedings in court. The previous coordinator of the HJP, a non-LSC-funded organization, contacted prospective clients at the courthouse, advised them of the availability of services, asked if they would like to discuss their case with a lawyer, and represented some the same day. Upon assuming operation of the program, NJP stopped engaging in direct contact and submitted its inquiry to LSC. NJP contacted LSC because it was concerned that the lack of direct client engagement had led to a decline in the usage of HJP services. LSC confirmed that under part 1638, it would be impermissible for NJP to communicate with prospective clients at the courthouse to advise them of the availability of legal services and ask individuals if they wanted to discuss their case with a lawyer and then accept those individuals as clients. EX–2003–1011, June 9, 2003. This advisory opinion remained LSC's position until 2016.

In 2016, OLA received a question from a law professor who was researching methods for increasing the likelihood that individuals living in poverty would engage with the legal system, including by seeking free legal services. The study proposed to test the effectiveness of different types of mailings sent to defendants in debt collection cases. The professor asked OLA whether part 1638 prohibits a grant recipient from representing individuals to whom the grant recipient has mailed information regarding their rights and identifying the types of legal services provided by the grant recipient. AO 2016–001. OLA opined that a mailing from an LSC grant recipient would violate part 1638 if it provided (1) ''unsolicited advice'' and (2) constituted a ''personal letter.'' *Id.* OLA also stated that a mailing that contains only ''information regarding legal rights and responsibilities or . . . information regarding the recipient's services and intake procedures'' does not constitute ''unsolicited advice.'' Further, a mailing does not constitute a ''personal letter'' if the letter provides only generic information that is not tailored to the individual receiving the mailing and it does not include specific facts related to the individual's legal issues. *Id.* OLA concluded that a mailing that contains unsolicited advice that is not tailored to the individual receiving the mailing is not considered a ''personal letter'' under § 1638.2(a). *Id.*

In 2020, OLA issued an advisory opinion about part 1638 that addressed a question involving the permissibility of a grant recipient representing individuals that it had either (1) contacted over the telephone or via text message; or (2) initiated contact with through the grant recipient's ongoing presence in the courthouse. Regarding in-person contact in courthouses, OLA confirmed that part 1638 does not prohibit a grant recipient from initiating contact with individuals if the grant recipient is providing ''information regarding legal rights and responsibilities'' or providing information about the grant recipient's intake process while ''. . . maintain[ing] an ongoing presence in a courthouse to provide advice at the invitation of the court[.]'' AO 2020–004. Additionally, part 1638 does not prohibit grant recipients from representing an individual that the grant recipient initiated contact with over the telephone or via text message as long as the communication contains only generic information that is not tailored to the individual or the specific facts of the individual's legal issues. *Id.*

LSC issued its most recent guidance on part 1638 in 2022. In Program Letter 22–1, LSC advised that grant recipients could send text messages to defendants (tenants) in landlord/tenant cases to notify them that an eviction case has been filed against them; to let them know of any upcoming court appearances; and to inform them of the availability of counsel. Program Letter 22–1. The program letter cited previous guidance from OLA regarding unsolicited advice via text message and mail.

LSC believes regulatory action is justified at this time for two reasons. First, OLA has been applying a nearly thirty-year-old rule concerning communications to new technologies and outreach strategies developed since part 1638 was published. Second, regulatory action is justified because LSC has continued to receive questions from grantees and other stakeholders about whether certain proposed outreach activities are permissible under part 1638. These questions have become more compelling as governments began lifting moratoria on filing evictions and pursuing debt collection cases that they had put into place near the beginning of the COVID–19 pandemic. Rulemaking to make part 1638 more consistent with the language of section 504(a)(18) has become more critical to helping grantees inform people living in poverty who are facing eviction or potentially significant financial consequences about their rights and the availability of attorneys to assist them.

On July 25, 2023, the Operations and Regulations Committee voted to

recommend that the Board authorize rulemaking on part 1638. On July 27, 2023, the Board authorized LSC to begin rulemaking. On October 16, 2023, the Committee voted to recommend that the Board authorize publication of this NPRM in the **Federal Register** for notice and comment. On October 17, 2023, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM.

II. Proposed Changes

§ 1638.1 Purpose

LSC proposes to make no changes to this section.

§ 1638.2 Definitions

LSC proposes to add a definition for the terms *communicate* and *communication* that pertains to mailed, emailed, and texted messages, as opposed to merely in-person engagements. With additional technology since the inception of this prohibition, this change will provide greater flexibility and clarity around the methods of communication that are permitted. This is not intended to require recipients to use various methods to reach client-eligible individuals; rather it clarifies which methods are permissible.

LSC also proposes to amend the definition of the term *in-person* to include virtual engagements such as clinics conducted via Zoom or other videoconferencing software. LSC proposes to make this change to reflect the transition, hastened by the COVID–19 pandemic, to the provision of legal services through virtual means in addition to traditional in-person engagements.

Finally, to account for adding a new definition, LSC proposes to redesignate existing paragraph (b), defining the term *unsolicited advice,* as paragraph (c).

§ 1638.3 Prohibition

LSC proposes to edit the text to be active as opposed to passive. For example, ''shall not represent'' would replace ''are prohibited from representing.''

§ 1638.4 Permissible Activities

LSC proposes to edit the text to be active as opposed to passive. Additionally, LSC proposes to revise § 1638.4(a) to permit communication and in-person engagement about individuals' legal rights and responsibilities and grantees' intake procedures. LSC believes that the proposed language should be clearer that grantees are permitted to send individuals information about rights and responsibilities that could lend itself to individuals filing complaints, either pro se or with the assistance of counsel. This instance may arise in the context of housing cases; for example, in housing habitability and tenant building purchase cases. A grantee may discover that there is a building with numerous safety issues and communicate with the tenants about the warranty of habitability, their options for getting the landlord to make repairs, including affirmative litigation, and the grantee's intake process. After receiving such legal information, some tenants could conceivably apply for legal assistance to help them pursue legal action to force repairs. This approach is consistent with the text of section 504(a)(18) of LSC's 1996 appropriation statute, which speaks in general terms about prohibited solicitation. It is critical to closing the justice gap that grantees are aware that they can advise their client-eligible communities about issues for which affirmative litigation may be an appropriate solution.

Further, LSC proposes to add paragraphs (c) and (e) to incorporate OLA's interpretations of existing part 1638 and the guidance LSC provided in PL 22–1. Finally, LSC proposes to redesignate existing paragraph (c) as paragraph (d) and to revise new paragraph (d) to replace the phrase ''physically or mentally disabled'' with the person-first term ''living with a physical or mental disability.''

§ 1638.5 Recipient Policies

LSC proposes no changes to this section.

List of Subjects in 45 CFR Part 1638

Grant programs—law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR part 1638 as follows:

PART 1638—RESTRICTION ON SOLICITATION

■ 1. Revise the authority citation for part 1638 to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise § 1638.2 to read as follows:

§ 1638.2 Definitions.

(a) *Communicate* or *communication* means to share information. Permissible forms of communication include, but are not limited to, sending information via mailings, text message, email, or other methods of voice or electronic communication.

(b) *In-person* means a face-to-face encounter, including virtual clinics or other encounters via videoconference.

(c) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice and with whom the recipient does not have an attorney-client relationship.

■ 3. Revise § 1638.3 to read as follows:

§ 1638.3 Prohibition.

(a) Recipients and their employees shall not represent a client as a result of in-person unsolicited advice.

(b) Recipients and their employees shall not refer to other recipients individuals to whom they have given in-person unsolicited advice.

■ 4. Revise § 1638.4 to read as follows:

§ 1638.4 Permissible activities.

A recipient may:

(a) Communicate about legal rights and responsibilities or the recipient's services and intake procedures or provide the same information through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.

(b) Communicate to parties in civil cases to notify them that a case has been filed against them; to inform them of upcoming court dates; to inform them that counsel may be available to represent them; and to provide information about intake.

(c) Represent an otherwise eligible individual seeking legal assistance from the recipient as a result of a communication or information provided as described in § 1638.4(a), provided that the request has not resulted from in-person unsolicited advice.

(d) Represent or refer clients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including those who are institutionalized or living with a physical or mental disability.

(e) Represent an individual with whom the recipient initiated contact over the phone or via an electronic platform so long as the communication provides only generic information that is not tailored to the individual or the specific facts of the individual's legal issues.

Dated: October 20, 2023.

Stefanie Davis,

Deputy General Counsel for Regulations and Ethics Officer, Legal Services Corporation.

[FR Doc. 2023–23568 Filed 10–24–23; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2023–0037]

RIN 0750–AL84

Defense Federal Acquisition Regulation Supplement: DoD Mentor-Protégé Program (DFARS Case 2023–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that permanently authorizes and modifies the DoD Mentor-Protégé Program.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 26, 2023 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2023–D011, using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for DFARS Case 2023–D011. Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2023–D011'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2023–D011 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 856 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510; 10 U.S.C. 4901 note) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under mentor-protégé agreements entered into after December 23, 2022. Section 856 does not apply to mentor-protégé agreements entered into prior to December 23, 2022.

II. Discussion and Analysis

DoD proposes to modify DFARS subpart 219.71 and DFARS appendix I to implement section 856 of the NDAA for FY 2023, which authorizes on a permanent basis and modifies the DoD Mentor-Protégé Program (the Program). This proposed rule removes all references to ''pilot'' to acknowledge that the Program is no longer a temporary, pilot program. Removal of the deadline for entering into a mentor-protégé agreement is also proposed, as this deadline is no longer applicable since the program is no longer authorized on a temporary basis. This proposed rule removes the specific dates for mentor reimbursements and credit toward subcontracting goals in its small business subcontracting plan under mentor-protégé agreements entered into after December 23, 2022.

In addition, DoD proposes to implement other changes made by section 856. The dollar threshold for mentor eligibility is proposed to be changed from $100 million to $25 million. The program participation term is proposed to be extended from two years to three years. The proposed rule includes the addition of ''manufacturing, test and evaluation'' to the list of assistance that a mentor may provide to a protégé under a mentor-protégé agreement and the addition of ''manufacturing innovation institutes'' to the list of assistance that a mentor firm may obtain for the protégé firm under a mentor-protégé agreement.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

This proposed rule amends the clause at DFARS 252.232–7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protégé Program, to remove the word ''Pilot'' from the clause title. However, this rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to not apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This proposed rule implements the permanent authorization of and statutory amendments to the DoD Mentor-Protégé Program. The purpose of the program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of small business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

Therefore, this proposed rule, when finalized, will benefit small business concerns that participate in the program by extending the opportunity to enter into DoD Mentor-Protégé agreements and extending the term of the agreements. This proposed rule is also expected to benefit large entities and the Government by expanding the defense industrial base.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this proposed rule is only expected to impact a limited number of small entities that become protégés under a DoD mentor-protégé agreement. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 856 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 856 transferred section 831 of the NDAA for FY 1991 (Pub. L. 101–510; 10 U.S.C. 4901 note) to 10 U.S.C. 4902 and authorized the DoD Mentor-Protégé Program on a permanent basis. Section 856 also extends the term for program participation and removes the term limitation for mentors to incur costs under agreements entered into after December 23, 2022.

The objective of this proposed rule is to implement the permanent authorization of the DoD Mentor-Protégé Program and to make other Program changes. The legal basis for the rule is section 856 of the NDAA for FY 2023.

The number of new DoD mentor-protégé agreements entered into in FY 2021 was 50, with a total of 104 active agreements; in FY 2022, 29 new agreements were entered into, with a total of 62 active agreements; and in FY 2023, 25 new agreements were entered into, with a total of 75 active agreements. The average number of new agreements entered into during the last three fiscal years was approximately 35 per year, with an average of 80 total active agreements per fiscal year. DoD estimates 44 new agreements will be entered into in FY 2024, with a total of 81 active agreements in place. As of June 5, 2023, there are 62 unique small entities with active agreements. Since the number of small entities that will enter into new agreements is unknown, DoD cannot provide a more precise estimate of the number of small entities to which this rule will apply.

This proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives to the rule that would accomplish the stated objectives of the statute and that would minimize the significant economic impact of the rule on small entities. DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities. Any impact is expected to be beneficial.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2023–D011), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0332.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, 252, and Appendix I to Chapter 2 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 219, 232, 252, and Appendix I to Chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

■ 2. Revise section 219.7100 to read as follows:

219.7100 Scope.

This subpart implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives for DoD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 [Amended]

■ 3. Amend section 219.7101 by removing the word ''Pilot''.

219.7103–1 [Amended]

■ 4. Amend section 219.7103–1 by removing the word ''Pilot''.

219.7103–2 [Amended]

■ 5. Amend section 219.7103–2 in paragraph (b) by removing the word ''Pilot''.

■ 6. Amend section 219.7104 by revising paragraphs (b) and (d) to read as follows:

219.7104 Developmental assistance costs eligible for reimbursement or credit.

* * * * *

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. For mentor-protégé agreements entered into prior to December 23, 2022, to be eligible for reimbursement under the Program, the mentor firm must incur the costs not later than September 30, 2026.

* * * * *

(d) For mentor-protégé agreements entered into prior to December 23, 2022, developmental assistance costs incurred by a mentor firm not later than September 30, 2026, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I. For mentor-protégé agreements entered into on or after December 23, 2022, developmental assistance costs that are eligible for crediting under the Program may be credited toward subcontracting plan goals as set forth in appendix I.

PART 232—CONTRACT FINANCING

232.412–70 [Amended]

■ 7. Amend section 232.412–70 in paragraph (b) by removing the word ''Pilot''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise the clause heading, title, and date to read as follows:

252.232–7005 Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protégé Program.

* * * * *

Reimbursement of Subcontractor Advance Payments—DoD Mentor–Protégé Program (Date)

* * * * *

■ 9. Amend appendix I to chapter 2—
■ a. By revising the appendix title;
■ b. In section I–100 by revising paragraph (a) introductory text.
■ c. In section I–102—
■ i. In paragraph (a)(3)(i) by removing ''$100'' and adding ''$25'' in its place;
■ ii. In paragraph (a)(3)(ii) by removing ''or''; and
■ iii. By adding paragraph (a)(3)(iv).
■ d. By revising section I–103.
■ e. In section I–106—
■ i. In paragraph (d)(1)(ii) by removing ''control'' and adding ''control, manufacturing, test and evaluation,'' in its place; and
■ ii. By adding paragraph (d)(6)(vi).
■ f. In section I–107 by revising paragraph (k).
■ g. In section I–108 paragraph (a)(5) by removing ''2 years'' and adding ''3 years'' in its place.
■ h. In section I–109 paragraph (b) by removing the word ''Pilot''.
■ i. In section I–111 by removing ''Director, OSBP'' and adding ''Director,

OSBP, OUSD(A&S) or the Director, OSBP'' in its place.

■ j. In section I–112.2 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as (a)(3).

The revisions and additions read as follows:

Appendix I to Chapter 2—Policy and Procedures for the DoD Mentor-Protégé Program

I–100 Purpose

(a) This appendix implements the DoD Mentor-Protégé Program (referred to as the Program) authorized under 10 U.S.C. 4902. The purpose of the Program is to provide incentives to DoD contractors to furnish eligible small business concerns with assistance designed to—

* * * * *

I–102 Participant Eligibility

(a) * * *

(3) * * *

(iv) Is otherwise capable to assist in the development of protégé firms and is approved by the Director OSBP, OUSD(A&S).

* * * * *

I–103 Incentives for Mentors

Mentors incurring costs through September 30, 2026, pursuant to a-mentor-protégé agreement approved prior to December 23, 2022, and mentors incurring costs pursuant to a mentor-protégé agreement approved on or after December 23, 2023, may be eligible for—

(a) Credit toward the attainment of its applicable subcontracting goals for unreimbursed costs incurred in providing developmental assistance to its protégé firm(s);

(b) Reimbursement pursuant to the execution of a separately priced contract line item added to a DoD contract; or

(c) Reimbursement pursuant to entering into a separate DoD contract upon determination by the Director, OSBP, of the cognizant military department or defense agency that unusual circumstances justify using a separate contract.

* * * * *

I–106 Development of Mentor-Protégé Agreements

* * * * *

(d) * * *

(6) * * *

(vi) Manufacturing innovation institutes.

* * * * *

I–107 Elements of a Mentor-Protégé Agreement

* * * * *

(k) A program participation term for the agreement that does not exceed 3 years. The agreement may be extended for a period not to exceed 2 years if approved by the Director, OSBP, OUSD(A&S). The Director, OSBP, of the cognizant military department or defense agency will submit requests for an extension of the agreement to the Director, OSBP, OUSD(A&S) for approval. The request will include a justification describing the unusual circumstances that warrant a term in excess of 3 years;

* * * * *

[FR Doc. 2023–23436 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

Notices

Federal Register
Vol. 88, No. 205
Wednesday, October 25, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2023]

Foreign-Trade Zone (FTZ) 26, Notification of Proposed Production Activity; Helena Industries, LLC; (Insecticides); Cordele, Georgia

Helena Industries, LLC, submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Cordele, Georgia within FTZ 26. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on October 19, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is thiamethoxam 240 grams/liter suspended concentrate (duty rate 5%).

The proposed foreign-status material/component is thiamethoxam (insecticide active ingredient) (duty rate 6.5%). The request indicates that thiamethoxam (insecticide active ingredient) is subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 4, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: October 20, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–23610 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2153]

Approval of Expansion of Subzone 98A; Mercedes-Benz U.S. International, Inc.; Moundville, Vance and Woodstock, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the City of Birmingham, grantee of Foreign-Trade Zone 98, has made application to the Board to expand Subzone 98A on behalf of Mercedes-Benz U.S. International, Inc. in Moundville, Vance and Woodstock, Alabama (FTZ Docket B–33–2023, docketed May 22, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (88 FR 34127–34128, May 26, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 98A on behalf of Mercedes-Benz U.S. International, Inc. in Moundville, Vance and Woodstock, Alabama, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: October 20, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–23609 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Dina Zhu, 101 Windsor Chase Drive, Lawrenceville, GA 30043; Order Relating to Dina Zhu

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Dina Zhu, of Lawrenceville, GA (''Zhu''), of its intention to initiate an administrative proceeding against Zhu pursuant to section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] through the issuance of a Proposed Charging Letter to Zhu that alleges that Zhu committed one

[1] The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''the EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

violation of the Regulations.[2] Specifically:

Charge 1 15 CFR 764.2(c)—Attempted Unlicensed Export to China

On or about November 30, 2018, Zhu engaged in conduct prohibited by the Regulations by attempting to export optical sighting devices, items subject to the Regulations, and valued at approximately $25,000, from the United States to the Peoples Republic of China (''China''), via Hong Kong, without the required Department of Commerce export license. At the time of the attempted export, the items were classified under export control classification (''ECCN'') 0A987 and controlled on Crime Control grounds.[3] Pursuant to Section 742.7 of the Regulations, a Department of Commerce export license was required before the items could be exported to Hong Kong or China. OEE was able to interdict this transaction by issuing the courier a re-delivery order to return or unload the shipment pursuant to Section 758.8 of the Regulations.

During a subsequent December 2018 interview with OEE Special Agents, Zhu admitted to responding to an online ad seeking help in exporting commodities to China. Zhu explained that optical sighting devices would be delivered to her house from U.S. vendors and then she would consolidate the packages and take them to an international courier for export to Hong Kong. According to Zhu, she shipped the packages to Hong Kong and was aware the items would then be forwarded to mainland China.

Zhu was also aware of U.S. government export licensing requirements for optical sighting devices, *inter alia,* having been notified by U.S. Customs and Border Protection (''CBP'') on or about May 19, 2017, that a shipment of optical sighting devices exported by Zhu was seized by CBP for not having the requisite U.S. Government authorization.[4]

In so doing, Zhu committed one violation of 15 CFR 764.2(c).

Whereas, BIS and Zhu have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

Whereas, Zhu admits committing the alleged conduct described in the Proposed Charging Letter; and

Whereas, I have approved of the terms of such Settlement Agreement;

It is therefore ordered:

First, for a period of one (1) year from the date of the Order, Zhu, with a last known address of 101 Windsor Chase Drive, Lawrenceville, GA 30043, and when acting for or on her behalf, her successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, any licenses issued under the Regulations in which Zhu has an interest as of the date of this Order shall be revoked by BIS.

Fourth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulation, any person, firm, corporation, or business organization related to Zhu by affiliation, ownership, control, or position of responsibility in the conduct or trade or related services may also be made subject to the provisions of this Order.

Fifth, as authorized by Section 766.18(c) of the Regulations, the denial period shall be imposed and extended for a second year, but for that second year shall be suspended for a probationary period and shall thereafter be waived, provided that Zhu has not committed another violation of ECRA, the Regulations, or any order, license or authorization issued under ECRA or the Regulations. If Zhu commits another violation of ECRA, the Regulations, or any order, license or authorization issued under ECRA or the Regulations during the two-year period from the date of the Order the suspended portion of the Order may be modified or revoked by BIS pursuant to Section 766.17(c) of the Regulations. If the suspension of the denial is modified or revoked, BIS may extend the active denial period until up to two-years from the date of the Order.

Sixth, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Seventh, a copy of this Order shall be provided to Zhu, and shall be published in the **Federal Register**.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022). The charged violations occurred in 2018. The Regulations governing the violations at issue are found in the 2018 version of the Code of Federal Regulations (15 CFR parts 730–774). The 2022 Regulations set forth the procedures that apply to this matter.

[3] Currently, the items are classified under ECCN 0A504. However, the items are still controlled on Crime Control grounds and would still require an export license to both Hong Kong and China.

[4] At that time, the seized items were determined to be controlled on the U.S. Munitions List under Category XII(c)(2)(i). U.S. State Department authorization pursuant to the International Trafficking in Arms Regulation, 22 CFR parts 120–130, was required to export the seized items.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–23571 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–008]

Gas Powered Pressure Washers From the Socialist Republic of Vietnam: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing an antidumping duty order on gas powered pressure washers (pressure washers) from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Palmer, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2023, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of pressure washers from Vietnam.[1] On October 13, 2023, the ITC notified Commerce of its final determination, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of pressure washers from Vietnam.[2]

Scope of the Order

The products covered by this order are gas powered pressure washers from Vietnam. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

On October 13, 2023, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of pressure washers from Vietnam.[3] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of pressure washers from Vietnam materially injure a U.S. industry, unliquidated entries of such merchandise from Vietnam, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of pressure washers from Vietnam. Antidumping duties will be assessed on unliquidated entries of pressure washers from Vietnam entered, or withdrawn from warehouse, for consumption, on or after June 15, 2023, the date of publication of the *Preliminary Determination* in the **Federal Register**, except as noted in the ''Provisional Measures'' section below.[4]

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of pressure washers from Vietnam, except as noted below. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margin indicated in the table below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rate listed below.

Estimated Weighted-Average Dumping Margin

The estimated weighted-average dumping margin is as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Vietnam-Wide Entity	225.86

Critical Circumstances

With respect to the ITC's negative critical circumstances determination on imports of pressure washers from Vietnam, Commerce intends to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after March 17, 2023 (*i.e.,* 90 days prior to the date of the publication of the *Preliminary Determination*), but before June 15, 2023 (*i.e.,* the date of publication of the *Preliminary Determination*).

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. None of the exporters of pressure washers requested Commerce to extend the four-month period to six months in this investigation.

The provisional measures period, beginning on the date of publication of the *Preliminary Determination,* ended on October 12, 2023. Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of pressure washers from Vietnam entered, or withdrawn from warehouse, for consumption after October 12, 2023, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury

[1] *See Gas Powered Pressure Washers from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 59503 (August 29, 2023).

[2] *See* ITC's Letter, Notification Letter: Investigation No. 731–TA–1598 (Final), dated October 13, 2023.

[3] *Id.*

[4] *See Gas Powered Pressure Washers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances,* 88 FR 39221 (June 15, 2023) (*Preliminary Determination*).

determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[5] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[6] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[7]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [8]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,*[9] the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [10] Accordingly, as stated above, the petitioner and Government of Vietnam should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for this order. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of Vietnam will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of Vietnam are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to pressure washers from Vietnam pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

This antidumping duty order is published in accordance with sections 735(e) and 736(a) of the Act and 19 CFR 351.224(e) and 19 CFR 351.211(b).

Dated: October 19, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of this order covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of this order covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this order, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of this order regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of this order is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts

[5] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[6] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[7] *Id.*

[8] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[9] *See Procedural Guidance.*

[10] *See Final Rule,* 86 FR at 52335.

thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this order are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2023–23612 Filed 10–24–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–157]

Aluminum Lithographic Printing Plates From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 18, 2023.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, 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) 482–1280.

SUPPLEMENTARY INFORMATION:

The Petition

On September 28, 2023, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of aluminum lithographic printing plates (printing plates) from the People's Republic of China (China) filed in proper form on behalf of Eastman Kodak Company (the petitioner).[1] The CVD petition was accompanied by antidumping duty (AD) petitions concerning imports of printing plates from China and Japan.[2]

On October 2 and 3, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] On October 5 and 6, 2023, 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 China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of printing plates in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing printing plates 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 a CVD investigation, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act.[5] Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[6]

Period of Investigation

Because the Petition was filed on September 28, 2023, pursuant to 19 CFR 351.204(b)(2), the period of investigation (POI) is January 1, 2022, through December 31, 2022.

Scope of the Investigation

The products covered by this investigation are printing plates from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

On October 2, 2023, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On October 5, 2023, the petitioner revised the scope.[8] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues regarding product coverage (*i.e.,* scope).[9] 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 determination. If scope comments include factual information, all such factual information should be limited to 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 November 7, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 17, 2023, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All such submissions must be filed on the record of each 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.[11] An

[1] *See* Petitioner's Letter, ''Aluminum Lithographic Printing Plates from China and Japan—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated September 28, 2023 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Aluminum Lithographic Printing Plates from the People's Republic of China and Japan: Supplemental Questions,'' dated October 2, 2023 (General Issues Questionnaire); and ''Petition for the Imposition of Antidumping Duties on Imports of Aluminum Lithographic Printing Plates from the People's Republic of China: Supplemental Questions,'' dated October 3, 2023.

[4] *See* Petitioner's Letters, ''Aluminum Lithographic Printing Plates from China and Japan—Petitioner's Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China and Japan,'' dated October 5, 2023 (General Issues Supplement); and ''Aluminum Lithographic Printing Plates from the People's Republic of China—Petitioner's Supplemental Questionnaire Response and Amendment to Volume IV Relating to Countervailing Duties,'' dated October 6, 2023.

[5] *See* Petition at Volume I (page 2).

[6] *See, infra,* section on ''Determination of Industry Support for the Petition.''

[7] *See* General Issues Questionnaire.

[8] *See* General Issues Supplement at 2–7 and Attachments 1–3.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[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/*

Continued

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 GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.[12] Commerce held consultations with the GOC on October 16, 2023.[13]

Determination of Industry Support for the Petition

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 must apply the same statutory definition regarding the domestic like product,[14] 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.[15]

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 investigation.[16] Based on our analysis of the information submitted on the record, we have determined that printing plates, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

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 Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of printing plates in 2022 and compared this to the estimated total 2022 production of the domestic like product for the entire U.S. industry.[18] We relied on data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[20] First, the Petition 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 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition accounts 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 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition accounts 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 Petition.[23] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[24]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China 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 exceed the

help.aspx and a handbook can be found at: *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* Commerce's Letter, ''Countervailing Duty Petition on Aluminum Lithographic Printing Plates from the People's Republic of China,'' dated October 3, 2023.

[13] *See* Memorandum, ''Consultations with Officials with the Government of China,'' dated October 16, 2023.

[14] *See* section 771(10) of the Act.

[15] *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)).

[16] *See* Petition at Volume I (pages 14–16); *see also* General Issues Supplement at 7–8.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Aluminum Lithographic Printing Plates from the People's Republic of China, dated concurrently with this notice (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Aluminum Lithographic Printing Plates from the People's Republic of China and Japan (Attachment II).

[18] *See* Petition at Volume I (pages 3–4 and Exhibits GEN–1 and GEN–2); *see also* General Issues Supplement at 8 and Attachment 4.

[19] *Id.* For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[20] *See* Petition at Volume I (pages 3–4 and Exhibits GEN–1 and GEN–2); *see also* General Issues Supplement at 8 and Attachment 4. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

[21] *See* Attachment II of the China CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.

[22] *See* Attachment II of the China CVD Initiation Checklist.

[23] *Id.*

[24] *Id.*

negligibility threshold provided for under section 771(24)(A) of the Act.[25]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; declining market share; underselling and price suppression; lost sales and revenues; plant closures; declining employment variables; and adverse impact on financial performance.[26] 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.[27]

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of printing plates from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 14 of 16 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate an investigation of each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner identified eight companies in China as producers/exporters of printing plates.[28] Following standard practice in CVD investigations, in the event Commerce determines that the number of exporters or producers is large such that Commerce cannot individually examine each company based on its resources, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.

On October 12, 2023, Commerce released CBP data on imports of printing plates from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of this investigation.[29] 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. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Distribution of Copies of the Petition

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 Petition has been provided to the GOC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our 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 Petition was filed, whether there is a reasonable indication that imports of printing plates from China are materially injuring, or threatening material injury to, a U.S. industry.[30] A negative ITC determination will result in the investigation being terminated.[31] Otherwise, this CVD investigation 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 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[32] 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.[33] 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 this investigation.

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.[34] 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, Commerce 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, stand-alone 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

[25] *See* Petition at Volume I (page 17 and Exhibit GEN–8).

[26] *Id.* at 17–35 and Exhibits GEN–1 through GEN–3, GEN–6, and GEN–8 through GEN–13; *see also* General Issues Supplement at 8–10 and Attachment 5.

[27] *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Aluminum Lithographic Printing Plates from the People's Republic of China and Japan.

[28] *See* Petition at Volume I at Exhibit GEN–5.

[29] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data,'' dated October 12, 2023.

[30] *See* section 703(a)(1) of the Act.

[31] *Id.*

[32] *See* 19 CFR 351.301(b).

[33] *See* 19 CFR 351.301(b)(2).

[34] *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.*

submitting factual information in this investigation.[35]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties must use the certification formats provided in 19 CFR 351.303(g).[37] 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 APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation 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 temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[38]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 18, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is aluminum lithographic printing plates. Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including in a foreign trade zone within the United States).

Excluded from the scope of this investigation are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastic.

Aluminum lithographic printing plates are currently classifiable under Harmonized Tariff of the United States (HTSUS) subheadings 3701.30.0000 and 3701.99.6060. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 3701.99.3000 and 8442.50.1000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2023–23531 Filed 10–24–23; 8:45 am]

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[35] *See* 19 CFR 351.302; *see also Time Limits Final Rule.*

[36] *See* section 782(b) of the Act.

[37] *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.*

[38] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020). Additionally, note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID–19, as well as additional clarifications and corrections to its AD/CVD regulations. Effective October 30, 2023, these changes will apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. *See Administrative Protective order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67079 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–156, A–588–881]

Aluminum Lithographic Printing Plates From the People's Republic of China and Japan: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 18, 2023.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros (the People's Republic of China (China)) and Adam Simons (Japan), 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 and (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 28, 2023, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of aluminum lithographic printing plates (printing plates) from China and Japan filed in proper form on behalf of Eastman Kodak Company (the petitioner).[1] These AD petitions were accompanied by a countervailing duty (CVD) petition concerning imports of printing plates from China.[2]

On October 2, 3, and 12, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] On October 5, 6, and 13, 2023, the petitioner filed timely responses to these requests for additional information.[4]

[1] *See* Petitioner's Letter, ''Aluminum Lithographic Printing Plates from China and Japan—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated September 28, 2023 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Aluminum Lithographic Printing Plates from the People's Republic of China and Japan: Supplemental Questions,'' dated October 2, 2023 (General Issues Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Aluminum Lithographic Printing Plates from the People's Republic of China: Supplemental Questions,'' dated October 3, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Aluminum Lithographic Printing Plates from Japan: Supplemental Questions,'' dated October 3, 2023; and Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated October 12, 2023.

[4] *See* Petitioner's Letters, ''Aluminum Lithographic Printing Plates from China and Japan—Petitioner's Supplement to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from China and Japan,'' dated October 5, 2023

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of printing plates from China and Japan 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 printing plates industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are 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.[5] Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

Periods of Investigation

Because the Petitions were filed on September 28, 2023, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Japan AD investigation is July 1, 2022, through June 30, 2023. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the China AD investigation is January 1, 2023, through June 30, 2023.

Scope of the Investigations

The products covered by these investigations are printing plates from China and Japan. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 2, 2023, Commerce requested further 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 October 5, 2023, the petitioner revised the scope.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues regarding product coverage (*i.e.,* scope).[9] 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,[10] 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 November 7, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 17, 2023, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that the 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 such submissions must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using 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 printing plates 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 factors of production (FOP) or costs 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 printing plates, 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 November 7, 2023, 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 November 17, 2023, which is ten 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 both of the AD investigations.

(General Issues Supplement); ''Aluminum Lithographic Printing Plates from the People's Republic of China—Petitioner's Responses to Supplemental Questions Related to Volume II of the Petition,'' dated October 6, 2023; ''Aluminum Lithographic Printing Plates from Japan—Petitioner's Responses to Supplemental Questions Related to Volume III of the Petition,'' dated October 2023; ''Aluminum Lithographic Printing Plates from the People's Republic of China—Petitioner's Response to 2nd Supplemental Questionnaire Related to Volume II of the Petition,'' dated October 13, 2023; and ''Aluminum Lithographic Printing Plates from Japan—Petitioner's Response to 2nd Supplemental Questionnaire Related to Volume III of the Petition,'' dated October 13, 2023.

[5] *See* Petitions at Volume I (page 2).

[6] *See, infra,* section on ''Determination of Industry Support for the Petitions.''

[7] *See* General Issues Questionnaire.

[8] *See* General Issues Supplement at 2–7 and Attachments 1–3.

[9] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[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 help 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).

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 must 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 ''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 printing plates, as defined in the scope, constitute 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 printing plates in 2022 and compared this to the estimated total 2022 production of the domestic like product for the entire U.S. industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[19] 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).[20] 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.[21] 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.[22] 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.[23]

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 alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; declining market share; underselling and price suppression; lost sales and revenues; plant closures; declining employment variables; and adverse impact on financial performance.[25] 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.[26]

[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)).

[15] *See* Petitions at Volume I (pages 14–16); *see also* General Issues Supplement at 7–8.

[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: Aluminum Lithographic Printing Plates from the People's Republic of China and Japan, dated concurrently with this notice (China AD Initiation Checklist and Japan AD Initiation Checklist, collectively Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Aluminum Lithographic Printing Plates from the People's Republic of China and Japan (Attachment II).

[17] *See* Petitions at Volume I (pages 3–4 and Exhibits GEN–1 and GEN–2); *see also* General Issues Supplement at 8 and Attachment 4.

[18] *Id.* For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[19] *See* Petitions at Volume I (pages 3–4 and Exhibits GEN–1 and GEN–2); *see also* General Issues Supplement at 8 and Attachment 4. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

[20] *See* Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

[21] *See* Attachment II of the Country-Specific AD Initiation Checklists.

[22] *Id.*

[23] *Id.*

[24] *See* Petitions at Volume I (page 17 and Exhibit GEN–8).

[25] *Id.* at Volume I (pages 17–35 and Exhibits GEN–1 through GEN–3, GEN–6, and GEN–8 through GEN–13); *see also* General Issues Supplement at 8–10 and Attachment 5.

[26] *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

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 AD investigations of imports of printing plates from China and Japan. 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 Country-Specific AD Initiation Checklists.

U.S. Price

For China and Japan, the petitioner based export price (EP) on pricing information for sales of, or offers for sale of, printing plates produced in and exported from each country. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.[27]

Normal Value [28]

For Japan, the petitioner based NV on home pricing information for printing plates produced and sold in Japan during the applicable time period and made certain adjustments to home market price to calculate a net ex-factory home market price, where appropriate.[29]

Commerce considers China to be an NME country.[30] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of these investigations. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that Turkey is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[31] The petitioner provided publicly available information from Turkey to value all FOPs.[32] Based on the information provided by the petitioner, we believe it is appropriate to use Turkey as a surrogate country to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to value Chinese manufacturers' FOPs.[33] Additionally, the petitioner calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of a Turkish producer of comparable merchandise.[34]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of printing plates from China and Japan 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 printing plates for both of the countries covered by this initiation are as follows: (1) China—107.62 percent; and Japan—23.46 percent.[35]

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 AD investigations to determine whether imports of printing plates from China and Japan are being, or are likely to be, sold in the United States at LTFV. For a full discussion of the basis for our decisions to initiate these AD investigations, *see* the Country-Specific AD Initiation Checklists. Public versions of the initiation checklists for these investigations are available on ACCESS. 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

Japan

In the Petitions, the petitioner identified five companies in Japan as producers/exporters of printing plates.[36] Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers is large such that Commerce cannot individually examine each company based on its resources, where appropriate, Commerce intends to select mandatory respondents in the Japan case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix.

On October 12, 2023, Commerce released CBP data on imports of printing plates from Japan under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[37] 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. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

China

In the Petitions, the petitioner named eight companies in China as producers and/or exporters of printing plates.[38] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company

Covering Aluminum Lithographic Printing Plates from the People's Republic of China and Japan.

[27] *See* Country-Specific AD Initiation Checklists.

[28] In accordance with section 773(b)(2) of the Act, for the Japan investigation, Commerce will request information necessary to calculate the constructed value (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.

[29] *See* Japan AD Initiation Checklist.

[30] *See, e.g., Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 34485 (May 30, 2023).

[31] *See* China AD Initiation Checklist.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *See* Country-Specific AD Initiation Checklists.

[36] *See* Petitions at Volume I (page 13 and Exhibit GEN–5).

[37] *See* Memorandum, ''Aluminum Lithographic Printing Plates from Japan Antidumping Duty Petition: Release of U.S. Customs and Border Protection Entry Data,'' dated October 12, 2023.

[38] *See* Petitions at Volume I (page 13 and Exhibit GEN–5).

based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are eight Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Commerce's website at *https://www.trade.gov/ec-adcvd-case-announcements.* Producers/exporters of printing plates from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on November 1, 2023, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[39]

Distribution of Copies of the AD 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 AD Petitions have been provided to the governments of China and Japan via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD 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 AD Petitions were filed, whether there is a reasonable indication that imports of printing plates from China and/or Japan are materially injuring, or threatening material injury to, a U.S. industry.[40] A negative ITC determination for either country will result in the investigation being terminated with respect to that country.[41] Otherwise, these AD 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 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[42] 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.[43] 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

[39] *See* Enforcement and Compliance's Policy Bulletin 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005) at 6 (emphasis added), available on Commerce's website at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[40] *See* section 733(a) of the Act.

[41] *Id.*

[42] *See* 19 CFR 351.301(b).

[43] *See* 19 CFR 351.301(b)(2).

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.[44] 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, Commerce 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, stand-alone 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.[45]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] 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 APO 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 temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[48]

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: October 18, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is aluminum lithographic printing plates. Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of these investigations include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including in a foreign trade zone within the United States).

Excluded from the scope of these investigations are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastic.

Aluminum lithographic printing plates are currently classifiable under Harmonized Tariff of the United States (HTSUS) subheadings 3701.30.0000 and 3701.99.6060. Further, merchandise that falls within the scope of these investigations may also be entered into the United States under HTSUS subheadings 3701.99.3000 and 8442.50.1000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2023–23530 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–DS–P

[44] *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.*

[45] *See* 19 CFR 351.302; see also, *e.g.,* Time Limits Final Rule.

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (Final Rule). Additional information regarding the Final Rule is available at *https://access.trade.gov/Resources/filing/index.html.*

[48] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020). Additionally, note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID–19, as well as additional clarifications and corrections to its AD/CVD regulations. Effective October 30, 2023, these changes will apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. *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

[RTID 0648- XD402]

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 Echo Offshore LLC (Echo) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from November 1, 2023 through December 31, 2024.

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: Jenna Harlacher, 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 Federal waters of the U.S. 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

Echo plans to conduct a 2D high-resolution seismic survey in Lease Blocks EI323, EI324, EI344, and EI345 (Eugene Island Area). Echo plans to use a single, 20-cubic inch airgun, in addition to three other high-resolution geophysical (HRG) acoustic sources. Please see Echo's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Echo 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 5322, 5398, January 19, 2021). In order to generate the appropriate take number 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.

Exposure modeling results were generated using the single airgun and HRG proxies. Because those results assume use of a 90-in^3 airgun and side-scan sonar, multibeam echosounder, and sub-bottom profiler respectively, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule. The survey is planned to occur for up to 2 days in Zone 2. The season is not known in advance. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. 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

[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).

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 5322, 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 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.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	0	2,207	n/a
Kogia spp.	0	4,373	n/a
Beaked whales	0	3,768	n/a
Rough-toothed dolphin	[4] 0	4,853	n/a
Bottlenose dolphin	62	176,108	0.0
Clymene dolphin	0	11,895	n/a
Atlantic spotted dolphin	[5] 26	74,785	0.0
Pantropical spotted dolphin	0	102,361	n/a
Spinner dolphin	0	25,114	n/a
Striped dolphin	0	5,229	n/a
Fraser's dolphin	0	1,665	n/a
Risso's dolphin	0	3,764	n/a
Melon-headed whale	0	7,003	n/a
Pygmy killer whale	0	2,126	n/a
False killer whale	0	3,204	n/a
Killer whale	0	267	n/a
Short-finned pilot whale	0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.

[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 the killer whale, the larger estimated SAR abundance estimate is used.

[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).

[4] Modeled take of one decreased to zero. For rough-toothed dolphin, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.,* estimated exposure value of 1, relative to assumed average group size of 14) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the very short survey duration and small estimated exposure value NMFS has determined that is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

[5] Modeled take of 21 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Echo'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 Echo authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: October 19, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–23570 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD446]

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is

scheduling a public meeting of its Joint Groundfish Committee, Advisory Panel and Recreational Advisory Panel via webinar 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 webinar will be held on Monday, November 13, 2023, at 9:30 a.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/4122443360576842070.*

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: The original notice published in the **Federal Register** on October 5, 2023 (88 FR 69158). This republishes the notice in its entirety due to the meeting now being a joint committee meeting.

Agenda

The Groundfish Committee, Advisory Panel and Recreational Advisory Panel will meet to review draft alternatives and draft impacts analysis and recommend preferred alternatives in Framework Adjustment 66/Specifications and Management Measures to the Committee/Council. They will possibly recommend 2024 Council priorities to the Committee/Council as well as receive an update on Framework Adjustment 68/Acceptable Biological Catches (ABC) Control Rules and the Atlantic Cod Transition Plan. 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, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 19, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23488 Filed 10–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0015]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Army proposes to establish a new system of records titled, Army Safety Management Program Records (ASMPR)–A0385–1 DAS. It supports the management and prevention of work-related illnesses and injuries by individuals engaged in DoD work-related activities while on or off the worksite. The system automates accidents, mishaps, safety inspections, and workplace hazard investigation data collection, identifies causal factors and potentially unsafe practices or conditions, and makes recommendations for corrective actions to prevent recurrence and reduce hazardous conditions. Additionally, DoD is issuing a Notice of Proposed Rulemaking, which proposes to exempt this system of records from certain provisions of the Privacy Act, elsewhere in today's issue of the **Federal Register**.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before November 24, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://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, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Luton, Department of the Army, Records Management Directorate, Attention: Army Privacy and Civil Liberties Office, 9301 Chapek Road (Building 1458), Fort Belvoir, VA 22060–5605, or by calling (571) 515–0213.

SUPPLEMENTARY INFORMATION:

I. Background

The Army Safety Management Information Program Records (ASMPR) documents safety mishaps and occupational incidents that require a safety investigation or an occupational health report as mandated by Federal law or DoD and Army policies. The system of records supports the operation of the Army's safety and occupational health program, which seeks to protect personnel from accidental death, injury, or occupational illness and apply risk management strategies to eliminate occupational injury or illness and loss of mission capability and resources, both on and off duty. This system of records describes Army's collection, use, and maintenance of records about an individual associated with accidents, mishaps, safety inspections, workplace hazards, and general risk management.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Freedom of Information Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: October 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Army Safety Management Program Records (ASMPR)–A0385–1 DAS.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Army Combat Readiness Center 4905 5th Ave, Fort Rucker, AL 36362.

SYSTEM MANAGER(S):

The system manager is Commander, U.S. Army Combat Readiness Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363, 334–255–3819.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 7013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; Executive Order (E.O.) 12196, Occupational Safety and Health Programs for Federal employees; DoD Instruction (DoDI) 6055.01, DoD Safety and Occupational Health (SOH) Program; DoDI 6055.05, Occupational and Environmental Health (OEH); DoDI 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping; Army Regulation 385–10, Army Safety Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

A. To investigate injuries and illnesses due to work-related activities, support the prevention and management of such injuries and illnesses, and reduce their adverse impact on operational readiness.

B. To support the automation and integration safety and occupational health into the Department of Army's overall management system and to ensure continuous improvement of safety and occupational health performance throughout the agency.

C. To collect and analyze safety and occupational health experience and exposure data for further study, and train personnel in safety and health.

D. To document and correlate relationships between planned actions and resultant accidents, mishaps, safety inspections, and workplace hazards; and to support prevention efforts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who suffer work-related injuries or illness caused by an accident, mishap, or hazard during work-related activities while on or off a DoD worksite, where there is a nexus to Department of Army personnel, activities, or facilities/equipment; (2) individuals found to have contributed to the accident, mishap, or hazard.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. For both categories of individuals, the system is likely to include Personal Information such as name, Social Security Number (SSN), DoD ID number, date of birth, gender, home address, email address, phone numbers, marital status, language; employment information, to include pay grade, job title, military unit destination, branch and location, educational status, deployment date.

B. For the category of individuals who have suffered injury or illness, the system is likely to include date of injury or illness, diagnosis, photographs, reports (police or casualty) and witness statements, investigation board findings and recommendations, mishap-related injuries recorded in military medical treatment records, and other records relevant to evaluating or investigating the illness, injury, or incident.

C. For category of individuals who were found to have caused the mishap or accident, the system is likely to include training and licensures pertinent to the operation of the specific vehicle or equipment involved, alcohol use, blood alcohol level if applicable, drug use, activity, fatigue factors, mistake(s) that contributed, personal protective equipment provided or used, and other records relevant to evaluating or investigating the incident.

Note 1. SSNs are no longer collected or retained for any individual involved in a mishap or accident. The SSN is only maintained in legacy mishap reports created prior to October 5, 2020.

Note 2. Privileged Safety Information, as defined in DoDI 6055.07, is not included in this system of records.

Note 3. General training records maintained in Army Safety Management Information System (ASMIS) that are not incorporated into a mishap or accident file are covered by DoD–0005, Defense Training Records SORN.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from:

A. Individuals, medical examiners, physicians or other medical service providers, supervisors, worker's compensation program records, and other relevant sources to supplement information reported directly by injured personnel.

B. Incident and investigative reports, to include accident/casualty reports, and military aviation records.

C. Other DoD databases, to include: Defense Manpower Data Center, Defense Civilian Personnel Data System, Defense Enrollment Eligibility Reporting System (DEERS), Defense Casualty Information Processing System, Reserve Component Automation System—Safety & Occupational Health, and Defense Health Agency E-Commerce System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when

the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To the U.S. Department of Labor, the Federal Aviation Administration, the National Transportation Safety Board, and state or local government organizations for use in a combined effort of accident prevention and post-incident analysis of factual data.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media or in agency-owned cloud environments.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the individual's name, DoD ID number, and/or DoD email address.

POLICIES AND PRACTICES FOR RETENTIO AND DISPOSAL OF RECORDS:

Records are retained for 50 years then destroyed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in controlled areas accessible only to authorized personnel. Access to personal information is further restricted by the use of Common Access Cards and user ID/passwords. Paper records are maintained in a controlled facility where physical entry is restricted by the use of locks, a card access control system, staffed reception areas and cameras inside and outside which monitor all doors. Technical controls in place include user identification and passwords, an Intrusion Detection System, encryption, firewalls, Virtual Private Networks and Public Key Infrastructure Certificates. Administrative controls in place include periodic security audits, ensuring only authorized personnel have access to personally identifiable information, encryption of backups containing sensitive data, and securing backups off-site.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the FOIA Office, Commander, U.S. Army Combat Readiness Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363. Signed written requests should contain the name and number of this system of records notice along with the full name, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

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).''

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).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD has exempted records maintained in this system from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3) and (4); (e)(1), (4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2), as applicable. In addition, when exempt records received from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the prior system(s) of records from which they were a part and claims any additional exemptions set forth here. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), and (c), and published in 32 CFR part 310.

HISTORY:

None.

[FR Doc. 2023–23300 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of Department of Defense Federal Advisory Committees—Defense Innovation Board

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Meeting of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Open to the public November 14, 2023, 4 p.m. to 5 p.m.

ADDRESSES: The DIB meeting will take place virtually.

FOR FURTHER INFORMATION CONTACT: Dr. Marina Theodotou, the Designated Federal Officer (DFO) at (571)–372–7344 (voice) *marina.theodotou.civ@mail.mil* and *osd.innovation@mail.mil.* Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 16F09–02, Alexandria, VA 22350–3600. Website: *https://innovation.defense.gov/*. The most up-to-date changes to the meeting agenda and link to the virtual meeting can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S. C 552b (commonly known as the ''Government in the Sunshine Act''), and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DIB is to provide the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Research and Engineering (USD(R&E)) independent advice and strategic insights on emerging and disruptive technologies and their impact on national security, adoption of commercial sector innovation best practices, and ways to leverage the U.S. innovation ecosystem to align structures, processes, and human capital practices to accelerate and scale innovation adoption, foster a culture of innovation and an experimentation mindset, and enable the DoD to build enduring advantages. The DIB focuses on innovation-related issues and topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(R&E). The objective of this DIB meeting is to obtain, review, and evaluate information related to the DIB's mission and studies.

Agenda: The DIB's public meeting is open to the public and will take place on November 14th, 2023, from 4 p.m.–5 p.m. The DFO, Dr. Marina Theodotou, will open the meeting and introduce the DIB Chair, Michael Bloomberg for his welcome and opening remarks. The DIB members leading the first study will present their findings and recommendations to the DIB for its deliberation and vote on the studies. The DIB members leading the second study will present an in-progress review for the DIB to discuss. The open meeting will conclude with closing remarks by the DIB's Chair and adjournment of the meeting.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or regarding the DIB's mission in general. Written comments or statements should be submitted to Dr. Marina Theodotou, the DFO, via email to *marina.theodotou.civ@mail.mil* and *osd.innovation@mail.mil.* Comments or statements must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements being submitted in response to the agenda set forth in this notice by 12 p.m. on November 9, 2023, to be considered by the DIB. The DFO will review all timely submitted written comments or statements with the DIB Chair and ensure the comments are provided to all members before the meeting. Written comments or statements received after this date may not be provided to the DIB until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the DIB's website.

Dated: October 20, 2023.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–23569 Filed 10–24–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting for members and the public of the 21st Century Energy Workforce Advisory Board (EWAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, December 11, 2023; 12 p.m. to 1:30 p.m. Eastern.

ADDRESSES: Virtual meeting.

Registration to participate remotely is available: *https://doe.webex.com/weblink/register/re8c1a78ae7f73247c42cc0dd5927a4a2.*

The meeting information will be posted on the 21st Century Energy Workforce Advisory Board website at: *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab,* and can also be obtained by contacting *EWAB@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Piper O'Keefe, Designated Federal Officer, EWAB; email: *EWAB@hq.doe.gov* or at 202–809–5110.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The 21st Century Energy Workforce Advisory Board (EWAB) advises the Secretary of Energy in developing a strategy for the Department of Energy (DOE) to support and develop a skilled energy workforce to meet the changing needs of the U.S. energy system. It was established pursuant to Section 40211 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (42 U.S.C. 18744) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. This is the fourth meeting of the EWAB.

Tentative Agenda: The meeting will start at 12 p.m. Eastern Time on December 11, 2023. The tentative meeting agenda includes roll call, continuing discussion of DOE's role in meeting future energy workforce needs, and public comments. The meeting will conclude at approximately 1:30 p.m.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://doe.webex.com/weblink/register/re8c1a78ae7f73247c42cc0dd5927a4a2.*

It is the policy of the EWAB to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The EWAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on December 11, 2023 at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on the EWAB's work, not for business marketing purposes. The Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak by contacting *EWAB@hq.doe.gov* no later than 12:00 p.m. Eastern Time on December 4, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, the EWAB will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the Board.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *EWAB@hq.doe.gov* no later than 12:00 p.m. Eastern Time on December 4, 2023, so that the comments may be made available to the EWAB members prior to this meeting for their consideration. Please note that because

EWAB operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the EWAB website.

Minutes: The minutes of this meeting will be available on the 21st Century Energy Workforce Advisory Board website at *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab* or by contacting Piper O'Keefe at *EWAB@hq.doe.gov.*

Signed in Washington, DC, on October 19, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–23494 Filed 10–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, December 5, 2023; 9 a.m.–5 p.m. PST.

Wednesday, December 6, 2023; 9 a.m.–2 p.m. PST.

ADDRESSES: This hybrid meeting will be in-person at the Red Lion in Pasco (address below) and virtually. To receive the virtual access information and call-in number, please contact the Deputy Designated Federal Officer, Lindsay Somers, at the telephone number or email listed below at least five days prior to the meeting.

Red Lion Pasco, 2525 N 20th Avenue, Pasco, WA 99301.

FOR FURTHER INFORMATION CONTACT: Lindsay Somers, Deputy Designated Federal Officer, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA, 99354; Phone: (509) 376–0923; or Email: *lindsay.somers@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda

- Tri-Party Agreement Agencies' Updates
- Presentation
- Board Subcommittee Reports
- Discussion of Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lindsay Somers at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Lindsay Somers. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on October 19, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–23493 Filed 10–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a hybrid open meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, December 7, 2023; 9 a.m. to 5 p.m. (eastern time).

Friday, December 8, 2023; 9 a.m. to 2 p.m. (eastern time).

ADDRESSES: Renaissance Washington, DC Downtown Hotel, 999 9th Street NW, Washington, DC 20001. This meeting is open to the public. Participation through Zoom will also be available. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

FOR FURTHER INFORMATION CONTACT: John Kogut, Designated Federal Officer (DFO); High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298; Email: *John.Kogut@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To receive, discuss and vote on the Particle Physics Project Prioritization Panel (P5) panel report describing an updated strategic plan for U.S. high-energy physics for the next ten years. To receive a Charge to form a Committee of Visitors to evaluate the Facilities Division of the Office of High Energy Physics. To discuss a coordinating panel on Software and Computing for High Energy Physics.

Tentative Agenda

- Update from DOE
- Update from NSF
- Presentation of Charge to HEPAP to form a Committee of Visitors to evaluate the Facilities Division of the Office of High Energy Physics
- A Coordinating Panel for Software and Computing
- Presentation of the P5 Report
- Discussion and voting on the P5 Report
- Communications with the Particle Physics Community

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be

made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the High Energy Physics Advisory Panel website at *https://science.osti.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on October 19, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–23495 Filed 10–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting for members and the public of the 21st Century Energy Workforce Advisory Board (EWAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 20, 2023; 12 p.m. to 1:30 p.m. Eastern.

ADDRESSES: Virtual meeting.

Registration to participate remotely is available: *https://doe.webex.com/weblink/register/r5f8be030c6d1e90c01560134b6bbfef9.*

The meeting information will be posted on the 21st Century Energy Workforce Advisory Board website at: *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab,* and can also be obtained by contacting *EWAB@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Piper O'Keefe, Designated Federal Officer, EWAB; email: *EWAB@hq.doe.gov* or at 202–809–5110.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The 21st Century Energy Workforce Advisory Board (EWAB) advises the Secretary of Energy in developing a strategy for the Department of Energy (DOE) to support and develop a skilled energy workforce to meet the changing needs of the U.S. energy system. It was established pursuant to section 40211 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (42 U.S.C. 18744) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. This is the third meeting of the EWAB.

Tentative Agenda: The meeting will start at 12 p.m. Eastern Time on November 20, 2023. The tentative meeting agenda includes roll call, DOE's role in meeting future energy workforce needs, and public comments. The meeting will conclude at approximately 1:30 p.m.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://doe.webex.com/weblink/register/r5f8be030c6d1e90c01560134b6bbfef9.*

It is the policy of the EWAB to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The EWAB expects that public statements presented at the meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on November 20, 2023, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on the EWAB's work, not for business marketing purposes. The Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak by contacting *EWAB@hq.doe.gov* no later than 12:00 p.m. Eastern Time on November 13, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, the EWAB will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the Board.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *EWAB@hq.doe.gov* no later than 12 p.m. Eastern Time on November 13, 2023, so that the comments may be made available to the EWAB members prior to this meeting for their consideration. Please note that because EWAB operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the EWAB website.

Minutes: The minutes of this meeting will be available on the 21st Century Energy Workforce Advisory Board website at *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab* or by contacting Piper O'Keefe at *EWAB@hq.doe.gov.*

Signed in Washington, DC, on October 19, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–23492 Filed 10–24–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–020; ER20–2726–001; ER20–2694–000]

Electric Quarterly Reports, Grand Energy, LLC, Icon Energy LLC; Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

On August 24, 2023, the Commission issued an order announcing its intent to revoke the market-based rate authority of several public utilities that had failed to file their required Electric Quarterly Reports.[1] The Commission directed those public utilities to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[2]

The time period for compliance with the August 24 Order has elapsed. The above-captioned companies failed to file their delinquent Electric Quarterly Reports. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariff of each of the companies who are named in the caption of this order.

Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23588 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electric Quarterly Reports,* 184 FERC ¶ 61,117 (2023) (August 24 Order).

[2] *Id.* at Ordering Paragraph A.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Institution of Section 206 Proceeding and Refund Effective Date

	Docket Nos.
Blossburg Power, LLC	EL23–107–000
Brunot Island Power, LLC	EL23–108–000
Gilbert Power, LLC	EL23–109–000
Hamilton Power, LLC	EL23–110–000
Hunterstown Power, LLC	EL23–111–000
Mountain Power, LLC	EL23–112–000
New Castle Power, LLC	EL23–113–000
Orrtanna Power, LLC	EL23–114–000
Portland Power, LLC	EL23–115–000
Sayreville Power, LLC	EL23–116–000
Shawnee Power, LLC	EL23–117–000
Shawville Power, LLC	EL23–118–000
Titus Power, LLC	EL23–119–000
Tolna Power, LLC	EL23–120–000
Warren Generation, LLC	EL23–121–000

On October 6, 2023, the Commission issued an order in Docket No. EL23–107–000, et al., pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation regarding the continued justness and reasonableness of Heritage Reactive Suppliers' [1] Rate Schedules. *Blossburg Power, LLC, et al.,* 185 FERC ¶ 61,018 (2023).

The refund effective date in Docket No. EL23–107–000, et al., established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–107–000, et al., must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* 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 ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The 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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23577 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

[1] Heritage Reactive Suppliers include: Blossburg Power, LLC; Brunot Island Power, LLC; Gilbert Power, LLC; Hamilton Power, LLC; Hunterstown Power, LLC; Mountain Power, LLC; New Castle Power, LLC; Orrtanna Power, LLC; Portland Power, LLC; Sayreville Power, LLC; Shawnee Power, LLC; Shawville Power, LLC; Titus Power, LLC; Tolna Power, LLC; and Warren Generation, LLC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–1888–044]

York Haven Power Company, LLC; Notice Of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 18, 2023.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license.

b. *Project No.:* 1888–044.

c. *Dates Filed:* June 20 and August 30, 2023.

d. *Applicant:* York Haven Power Company, LLC.

e. *Name of Project:* York Haven Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River in York, Lancaster, and Dauphin counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, York Haven Power Company, LLC c/o Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD, 04462, (804) 382–1764.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. 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/doc-sfiling/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: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–1888–044.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to replace the turbines and gearboxes for units 8 and 10. The proposal would not result in a change to the hydraulic capacity of the project but would increase the authorized installed capacity by 350 kilowatts. The applicant does not

propose any changes to project operation or other project facilities.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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: October 18, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23506 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–136–000]

Sunlight Storage 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 Sunlight Storage 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23589 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–45–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—October 19, 2023 Administrative Changes to be effective 11/20/2023.

Filed Date: 10/19/23.
Accession Number: 20231019–5019.
Comment Date: 5 p.m. ET 10/31/23.
Docket Numbers: RP24–46–000.
Applicants: Cove Point LNG, LP.
Description: § 4(d) Rate Filing: Cove Point—October 19, 2023 Administrative Change to be effective 11/20/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5021.
Comment Date: 5 p.m. ET 10/31/23.
Docket Numbers: RP24–47–000.
Applicants: Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: CGT—October 19, 2023 Administrative Changes to be effective 11/20/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5022.
Comment Date: 5 p.m. ET 10/31/23.
Docket Numbers: RP24–48–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreement—10/19/2023 to be effective 10/19/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5031.
Comment Date: 5 p.m. ET 10/31/23.
Docket Numbers: RP24–49–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: NC Cap Rel Neg Rate Agmt (Muni Elec Autho of GA 8480 to Energy Authority 57346) to be effective 10/18/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5081.
Comment Date: 5 p.m. ET 10/31/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23591 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–068]

South Feather Water and Power Agency; Notice of Availability of the Draft Supplemental Environmental Impact Statement for the South Feather Power Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the existing South Feather Power Project (FERC No. 2088) and has prepared a draft supplemental environmental impact statement (SEIS) for the project. The project is located on the South Fork Feather River, Lost Creek, and Slate Creek in Butte, Yuba, and Plumas Counties, California and occupies 1,977.12 acres of federal land administered by Plumas National Forest and 10.57 acres of federal land administered by the U.S. Bureau of Land Management. The project is a water supply and power generating project consisting of four hydroelectric developments: Sly Creek, Woodleaf, Forbestown, and Kelly Ridge, which combined provide 117.3-megawatts of power generating capacity and an average of 498,972 megawatt-hours of electricity annually.

On June 4, 2009, Commission staff issued a final environmental impact statement (EIS) on the proposed relicensing of the South Feather Power Project. On October 23, 2012, South Feather Water and Power Agency entered into a Settlement Agreement with the Department of Water Resources of the State of California and the State Water Contractors, Incorporated. On November 30, 2018, the California State Water Resources Control Board issued a water quality certificate for the project. Additionally, on October 14, 2022, the U.S. Department of Agriculture, Forest Service filed revised final 4(e) conditions. The draft SEIS describes staff's analysis of the applicant's proposal and the alternatives for relicensing the project, including our analyses of the terms and conditions included in the filings made subsequent to the issuance of the final EIS as well as the potential effects on species newly listed or updated under the Endangered Species Act. The draft SEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

The Commission provides all interested persons with an opportunity to view and/or print the draft SEIS 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments must be filed within 60 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2088–068.

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*.

Anyone may intervene in this proceeding based on this draft SEIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

For further information, please contact Quinn Emmering, the Commission's relicensing coordinator for the project, at (202) 502–6382 or *quinn.emmering@ferc.gov*.

Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23586 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–72–000]

Aron Energy Prepay 29 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 Aron Energy Prepay 29 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23598 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–139–000]

Cedar Creek Wind, 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 Cedar Creek Wind, 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

[1] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

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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Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23593 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–109–000]

Caden Energix Axton 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 Caden Energix Axton 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23580 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–1–000]

Cameron Interstate Pipeline, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 4, 2023, Cameron Interstate Pipeline, LLC (Cameron Interstate), 1500 Post Oak Boulevard, Houston, TX 77056, filed an application under section 7(c) and 7(e) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to construct and operate the Holbrook Expansion Project (Project) on its existing Cameron Interstate Pipeline system located in Calcasieu Parish, Louisiana. Specifically, the Project consists of adding two compressor units, one 42,000 nameplate horsepower (HP) compressor unit and one 5350 HP compressor unit. The Project will allow Cameron Interstate to provide up to 1,079,000 dekatherms per day of firm natural gas transportation capacity which will be used for feed gas to Cameron LNG, LLC natural gas liquefaction and liquefied natural gas export facility in Cameron Parish, Louisiana (Cameron LNG Terminal), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Jerrod L. Harrison, Assistant General Counsel,

Sempra Infrastructure, 488 8th Avenue, San Diego, CA 92101, by phone at (619) 696–2987, or email at *jharrison@SempraGlobal.com*.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on November 9, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before November 9, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–1–000 in your submission.

(1) 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;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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 ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–1–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] 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[7] and the regulations under the NGA[8] by the intervention deadline for the project, which is November 9, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–1–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–1–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (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 at: Jerrod L. Harrison, Assistant General Counsel, Sempra Infrastructure, 488 8th Avenue, San Diego, CA 92101, by phone at (619) 696–2987, or email at *jharrison@SempraGlobal.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. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] 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.[11] 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.

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.*

Intervention Deadline: 5 p.m. Eastern Time on November 9, 2023.

Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23597 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–95–000]

New Brunswick Energy Marketing Corporation; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 19, 2023, the Commission issued an order in Docket No. EL23–95–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether New Brunswick Energy Marketing Corporation's market-based rate authority in the New Brunswick balancing authority area remains just and reasonable. *New Brunswick Energy Marketing Corporation,* 185 FERC ¶ 61,048.

The refund effective date in Docket No. EL23–95–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–95–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* 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 ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23579 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–71–000]

Aron Energy Prepay 30 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 Aron Energy Prepay 30 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23583 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–13–000.

Applicants: St. Gall Energy Storage I LLC.

Description: St. Gall Energy Storage I LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/18/23.

Accession Number: 20231018–5151.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: EG24–14–000.

Applicants: Silver Peak Energy, LLC.

Description: Silver Peak Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/19/23.

Accession Number: 20231019–5091.

Comment Date: 5 p.m. ET 11/9/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–4–000.

Applicants: Greenbacker Renewable Energy Company LLC, Greenbacker Renewable Energy Company II, LLC.

Description: Petition for Declaratory Order of Greenbacker Renewable Energy Company LLC and Greenbacker Renewable Energy Company II, LLC.

Filed Date: 10/16/23.

Accession Number: 20230919–5132.

Comment Date: 5 p.m. ET 11/15/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–874–006.

Applicants: Calpine Bethlehem, LLC.

Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 10/19/23.

Accession Number: 20231019–5117.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER14–875–006.

Applicants: Calpine Mid-Atlantic Generation, LLC.

Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 10/19/23.

Accession Number: 20231019–5124.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER17–2566–005.

Applicants: Calpine Mid-Atlantic Generation, LLC.

Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.

Filed Date: 10/19/23.

Accession Number: 20231019–5130.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER23–2020–002.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2023–10–19 Amendment to Compliance Filing—Market Parameters to be effective 9/13/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5102.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER23–2040–002.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment: NYISO Amendment re: DER Participation Model effective date to be effective 12/18/2023.

Filed Date: 10/18/23.

Accession Number: 20231018–5158.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER23–2459–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff

filing per 35.17(b): Seminole Solar Projects (Seminole V Solar + BESS) LGIA Deficiency Response to be effective 7/10/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5061.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER23–2460–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Seminole Solar Projects (Seminole VI Solar + BESS) LGIA Deficiency Response to be effective 7/10/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5062.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER23–2461–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Seminole Solar Projects (Seminole VII Solar + BESS) LGIA Deficiency Response to be effective 7/10/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5063.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER23–2462–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Seminole Solar Projects (Seminole VIII Solar + BESS) LGIA Deficiency Response to be effective 7/10/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5064.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–142–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to BHP—BH Wyoming GDEMA to be effective 12/18/2023.

Filed Date: 10/18/23.

Accession Number: 20231018–5133.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER24–143–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to BHP—BHCE GDEMA to be effective 12/18/2023.

Filed Date: 10/18/23.

Accession Number: 20231018–5136.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER24–144–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to BHP—CLFP GDEMA to be effective 12/18/2023.

Filed Date: 10/18/23.

Accession Number: 20231018–5138.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER24–145–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to BHP—Gillette GDEMA to be effective 12/18/2023.

Filed Date: 10/18/23.

Accession Number: 20231018–5141.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER24–146–000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Revisions to BHP—MDU GDEMA to be effective 3/7/2021.

Filed Date: 10/18/23.

Accession Number: 20231018–5148.

Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER24–147–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6790; Queue No. AF2–175 Re: Withdrawal to be effective 12/19/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5026.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–148–000.

Applicants: PacifiCorp.

Description: Tariff Amendment: Termination of Black Hills Non-Conforming PTP Agreement (SA 67) to be effective 12/31/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5041.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–149–000.

Applicants: Citizens Sunrise Transmission LLC.

Description: § 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational—2023 to be effective 1/1/2024.

Filed Date: 10/19/23.

Accession Number: 20231019–5053.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–150–000.

Applicants: Citizens Sycamore-Penasquitos Transmission LLC.

Description: § 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational—2023 to be effective 1/1/2024.

Filed Date: 10/19/23.

Accession Number: 20231019–5054.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–151–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Pachuta Solar A (Solar & ESS) LGIA Amendment Filing to be effective 10/4/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5065.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–152–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one Facilities Agreement re ILDSA SA No. 5120 to be effective 1/1/2024.

Filed Date: 10/19/23.

Accession Number: 20231019–5073.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–153–000.

Applicants: Willowbrook Solar I, LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 11/13/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5086.

Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–154–000.

Applicants: BCE Los Alamitos, LLC.

Description: Compliance filing: Notice of Change in Status and Request for Cat 1 Seller Status in the SW Region to be effective 10/20/2023.

Filed Date: 10/19/23.

Accession Number: 20231019–5108.

Comment Date: 5 p.m. ET 11/9/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23585 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–153–000]

Willowbrook Solar I, 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 Willowbrook Solar I, 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23582 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–134–000]

Three Rivers District 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 Three Rivers District 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 November 8, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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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: October 19, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23578 Filed 10–24–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0804; FR ID 180043]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 24, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program.

Form Numbers: FCC Forms 460, 461, 462, 463, 465, 466, 467, and 469.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal governments.

Number of Respondents and Responses: 12,854 unique respondents; 116,404 responses.

Estimated Time per Response: 0.30–17 hours.

Frequency of Response: On occasion, One-time, Annual, and Monthly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, *47 U.S.C. 151–154, 201–205, 214, 254, 303(r),* and *403,* unless otherwise noted.

Total Annual Burden: 442,117 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission seeks OMB approval of a revision of this information collection as a result of the *2023 Promoting Telehealth Order on Reconsideration, Second Report and Order, and Order,* FCC 23–6, rel. January 27, 2023 (*2023 Order*) (88 FR 17379, March 23, 2023). This collection is utilized for the RHC support mechanism of the Commission's universal service fund (USF). The collection of this information is necessary so that the Commission and the Universal Service Administrative Company (USAC) will have sufficient information to determine if entities are eligible for funding pursuant to the RHC universal service support mechanism, to determine if entities are complying with the Commission's rules, and to promote program integrity. This information is also necessary in order to allow the Commission to evaluate the extent to which the RHC Program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals for the RHC Program.

This information collection is being revised to: (1) extend some of the existing information collection requirements for the Healthcare Connect Fund and Telecom Programs; (2) revise some of the information collection requirements for the Telecom Programs as a result of the *2023 Order;* and (3) add a new information collection requirement for the Telecom Program as a result of the *2023 Order.* As part of this information collection, the Commission is also revising the FCC Form 466 Template, terminating the

Telecommunications Program Invoice Template and the FCC Form 467 Template in the Telecom Program, and adding a FCC Form 469 Template which is the new invoice form in the Telecom Program adopted by the *2023 Order* to ensure that healthcare providers have adequate, predictable support, to simplify the invoicing process, and to promote program integrity in the RHC Program. These changes will be effective starting funding year 2024.

The Healthcare Connect Fund Program currently includes FCC Forms 460, 461, 462, and 463. Prior to funding year 2024, the Telecom Program includes FCC Forms 465, 466, and 467. Effective funding year 2024, the Telecom Program includes FCC Forms 465, 466, and 469. The information on the FCC Form templates is a representative description of the information to be collected via an online portal and is not intended to be a visual representation of what each applicant or service provider will see, the order in which they will see information, or the exact wording or directions used to collect the information. Where possible, information already provided by applicants from previous filing years or that was pre-filed in the system portal will be carried forward and auto-generated into the form to simplify the information collection for applicants.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23602 Filed 10–24–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 23–11]

Notice of Filing of Complaint and Assignment; Bal Container Line Co., Limited, Complainant v. SSA Marine Terminal and SSA Terminals (Pier A), LLC, Respondents

Served: October 19, 2023.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Bal Container Line Co., Limited (the ''Complainant'') against SSA Marine Terminal and SSA Terminals (Pier A), LLC (the ''Respondents''). Complainant states that the Commission has jurisdiction over the complaint under the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.,* and jurisdiction over the Respondents as a marine terminal operator.

Complainant is an entity with a principal place of business in Hong Kong and a vessel operating common carrier.

Complainant identifies Respondent SSA Marine Terminal as a Delaware limited liability company with a principal place of business in Seattle, Washington.

Complainant identifies Respondent SSA Terminals (Pier A), LLC as a limited liability company with a principal place of business in Seattle, Washington.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) and 46 CFR part 545 regarding a failure to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. Complainant alleges these violations arose from an assessment of a flat rate congestion surcharge without a stated relationship to actual terminal congestion and continued assessment of congestion surcharges while containers were placed in inaccessible terminal areas.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-11/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by October 21, 2024, and the final decision of the Commission shall be issued by May 5, 2025.

Carl Savoy,

Federal Register Alternate Liaison Officer, Federal Maritime Commission.

[FR Doc. 2023–23491 Filed 10–24–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 24, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org.*

1. *Glacier Bancorp, Inc., Kalispell, Montana;* to merge with Community Financial Group, Inc., and thereby indirectly acquire Wheatland Bank, both of Spokane, Washington.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–23513 Filed 10–24–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at

https://www.federalreserve.gov/foia/request.htm. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 8, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Pauline Elizabeth Hawkins, individually, and as trustee of the Pauline E. Hawkins Trust, both of St. Louis, Missouri;* to retain voting shares of SBW Bancshares, Inc., and thereby indirectly retain voting shares of State Bank, both of Waterloo, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–23514 Filed 10–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database.'' This proposed information collection was previously published in the **Federal Register** on August 24, 2023, and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database

AHRQ requests that OMB reapprove AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database: OMB Control number 0935–0165, expiration November 30, 2023 (the CAHPS Health Plan Database). The CAHPS Health Plan Database consists of data from the AHRQ CAHPS Health Plan Survey. Health plans in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The CAHPS Health Plan Database was developed by AHRQ in 1998 in response to requests from health plans, purchasers, and the Centers for Medicare & Medicaid Services (CMS) to provide comparative data to support public reporting of health plan ratings, health plan accreditation and quality improvement.

This research has the following goals:

(1) To maintain the CAHPS Health Plan Database using data from AHRQ's standardized CAHPS Health Plan Survey to provide results to health care purchasers, consumers, regulators and policy makers across the country.

(2) To offer several products and services, including aggregated results presented through an Online Reporting System, summary chartbooks, custom analyses, and data for research purposes.

(3) To provide data for AHRQ's annual National Healthcare Quality and Disparities Report.

(4) To provide state-level data to CMS for public reporting on *Medicaid.gov* and *Data.Medicaid.gov* that does not display the name of the health plans.

Survey data from the CAHPS Health Plan Database is used to produce four types of products: (1) An annual chartbook available to the public on the CAHPS Database website (*https://www.ahrq.gov/sites/default/files/wysiwyg/cahps/cahps-database/2022-hp-chartbook.pdf*); (2) individual participant reports that are confidential and customized for each participating organization (*e.g.,* health plan, Medicaid agency) that submits their data; (3) a research database available to researchers wanting to conduct additional analyses; and (4) data tables provided to AHRQ for inclusion in the National Healthcare Quality and Disparities Reports.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, quality measurement and development, and database development. 42 U.S.C. 299a(a)(1), (2) and (8).

Method of Collection

To achieve the goals of this project the following activities and data collections will be implemented:

- Registration Form—The point-of-contact (POC), often the sponsor from Medicaid agencies and health plans, completes a number of data submission steps and forms, beginning with the completion of the online registration form. The purpose of this form is to collect basic contact information about the organization and initiate the registration process.
- Health Plan Information Form—The purpose of this form, completed by the participating sponsor organization, is to collect background characteristics of the health plan.
- Data Use Agreement—The purpose of the data use agreement, completed by the participating sponsor organization, is to state how data submitted by health plans will be used and provide confidentiality assurances.
- Data Files Submission—POCs upload their data file using the Health Plan data file specifications to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondent to participate in the database. The burden hours pertain only to the collection of Medicaid data from State Medicaid agencies and individual Medicaid health plans because those are the only

entities that submit data through the data submission process. The 125 POCs in Exhibit 1 are a combination of an estimated 115 State Medicaid agencies and individual health plans (Sponsors), and 10 vendor organizations.

Each sponsor, which is made up of State Medicaid agencies and individual health plans, and vendor will register online for submission. The online Registration form will require about 5 minutes to complete. Each sponsor will also complete a Health Plan information form of information about each Health Plan such as the name of the plan, the product type (*e.g.,* HMO, PPO), the population surveyed (*e.g.,* adult Medicaid or child Medicaid). Each year, the prior year's plan data are preloaded in the plan table to lessen burden on the Sponsor. The Sponsor is responsible for updating the plan table to reflect the current year's plan information. The online Health Plan Information form takes on average 30 minutes to complete per health plan with each POC completing the form for four plans on average. The Data Use Agreement (DUA) will be completed by the 115 participating State Medicaid agencies or individual health plans. Vendors do not sign or submit DUAs. The DUA requires about 5 minutes to sign and upload. Each submitter will provide a copy of their questionnaire and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provided by the CAHPS Database. Submitters will upload one data file per health plan. Once a data file is uploaded the file will be checked automatically to ensure it conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to fix any errors in their data file and resubmit if necessary. It will take about 1 hour to submit the data for each plan, and each POC will submit data for four plans on average. The total burden is estimated to be 710 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	125	1	5/60	10
Health Plan Information Form	115	4	30/60	230
Data Use Agreement	115	1	5/60	10
Data Files Submission	115	4	1	460
Total	470	NA	NA	710

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $36,222 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	125	10	[a] 57.61	$576
Health Plan Information Form	115	230	[a] 57.61	13,250
Data Use Agreement	115	10	[b] 102.41	1,024
Data Files Submission	115	460	[c] 46.46	21,372
Total	470	710	NA	36,222

* National Compensation Survey: Occupational wages in the United States May 2021, ''U.S. Department of Labor, Bureau of Labor Statistics.''
[a] Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
[b] Based on the mean hourly wage for Chief Executives (11–1011).
[c] Based on the mean hourly wages for Computer Programmers (15–1251).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 19, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–23534 Filed 10–24–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Title VI Program Performance Report (OMB Control Number 0985–0007)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed extension without change information collection and solicits comments on the information collection requirements related to the Title VI Program Performance Report (OMB Control Number 0985–0007).

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by December 26, 2023.

ADDRESSES: Submit electronic comments on the collection of information to: *evaluation@acl.hhs.gov*. Submit written comments on the collection of information to the Administration for Community Living, Washington, DC 20201, Attention: Public Comment OMB Control Number 0985–0007.

FOR FURTHER INFORMATION CONTACT: Amanda *Cash@acl.hhs.gov* at 202–795–7369.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. A Collection of information includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including using automated collection techniques when appropriate, and other forms of information technology.

A Program Performance Report on activities under Title VI of the Older Americans Act (OAA) is necessary for the Administration of Community Living (ACL) to monitor federal funds effectively and to be informed as to the progress of the programs. Grantees are required to submit an annual Program Performance Report to allow for efficient federal monitoring.

The OAA states that an applicant for a grant under Title VI Part A, Indian Program, shall ''provide that the tribal organization will make such reports in such form and containing such information, as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to assure the correctness of such reports.'' The OAA also states that an applicant for a grant under Title VI Part B, Native Hawaiian Program, shall ''provide that the organization will make such reports in such form and containing such information as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to ensure the correctness of such reports.'' An applicant for a grant under Title VI Part C, Native American Caregiver Support Program must also prepare and submit reports on the data and records, including information on the services funded by ACL. A combined Program Performance Report form is used for reporting by grantees under Parts A, B and C. The regulations at 45 CFR 92.40(b)(1) provide that ''grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports.''

The Program Performance Report provides a data base for ACL to: (1) monitor program achievement of performance objectives; (2) establish program policy and direction; and (3) prepare responses to Congress, the OMB, other federal departments, and public and private agencies as required by the OAA. If ACL did not collect the program data herein requested, it would not be able to monitor and manage total program progress as expected, nor develop program policy options directed toward assuring the most effective use of limited Title VI funds.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: The burden estimate is specific to the type of work done by the grantees that use this reporting format; ACL estimates it takes 20 hours to complete the Title VI PPR.

With 282 respondents taking 20 hours per performance report, annual burden hour totals 5,640 hours.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Title VI PPR	282	1	20	5,640
Total				5,640

Dated: October 20, 2023.

Alison Barkoff,

Senior official performing the duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2023–23562 Filed 10–24–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; State Health Insurance Assistance Program (SHIP) Client Contact Forms OMB Control Number 0985–0040

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed Revision for the information collection requirements related to the State Health Insurance Assistance Program (SHIP) Client Contact Forms OMB Control Number 0985–0040.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by December 26, 2023.

ADDRESSES: Submit electronic comments on the collection of information to: *Katherine.Glendening@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Katherine Glendening.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening at *Katherine.Glendening@acl.hhs.gov,* or (202) 795–7350.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) Ways to enhance the quality, utility, and clarity of the information to be collected;

(3) Accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The purpose of this data collection is to collect performance data from grantees, grantee team members and partners. Congress requires this data collection for program monitoring and Government Performance Results Act (GPRA) purposes. This data collection allows ACL to communicate with Congress and the public on the SHIP, the SMP program, and the Medicare Improvements for Patients & Providers Act (MIPPA) program. The SHIP, SMP, and MIPPA programs are located in each of the 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. In order to ensure that grantees report activity accurately and consistently, it is imperative that these data collection tools remain active. The respondents for this data collection are grantees, grantee team members, and partners who meet with Medicare beneficiaries and older adults' in-group settings and in one-on-one sessions to educate them on Medicare enrollment, Medicare benefits and subsidy programs, the importance of being aware of Medicare fraud, error and abuse, and having the knowledge to protect the Medicare system.

Authorizing Legislation

Section 4360(f) of OBRA 1990 created the State Health Insurance Assistance Program (SHIP) and requires the Secretary to provide a series of reports to the U.S. Congress on the performance of the SHIP program annually. The law also requires ACL to report on the program's impact on beneficiaries and to obtain important feedback from beneficiaries. This tool captures the information and data necessary for ACL to meet these Congressional requirements, as well as, capturing performance data on individual grantees providing ACL essential insight for monitoring and technical assistance purposes. In addition, the Medicare Improvements for Patients and Providers Act (MIPPA), initially passed in 2008, provided targeted funding for the SHIPs, area agencies on aging (AAAs), and Aging and Disability Resource Centers (ADRC) to conduct re enrollment assistance to Medicare beneficiaries for the Limited Income Subsidy (LIS) and Medicare Savings Program (MSP). These activities, collectively known as the MIPPA Program, have been funded nearly annually through a series of funding or extenders bills (Pub. L. 110–275 as amended by Pub. L. 111–148; Pub. L. 113–67; Pub. L. 113–93; Pub. L. 114–10; Pub. L. 115–123; and Pub. L. 116–59). Public Law 116–136, div. A, title III, section 3803(a), Mar. 27, 2020, 134 Stat. 428, extended funding for MIPPA through November 30, 2020. This tool also collects performance and outcome data on the MIPPA Program providing ACL necessary information for monitoring and oversight.

Under Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, Congress established the Senior Medicare Patrol Projects in order to further curb losses to the Medicare program.

The Senate Committee noted that retired professionals, with appropriate training, could serve as educators and resources to assist Medicare beneficiaries and others to detect and report errors, fraud and abuse.

Among other requirements, it directed the ACL to work with the Office of Inspector General (OIG) and the Government Accountability Office (GAO) to assess the performance of the program. The ACL employs this tool to collect performance and outcome data on the SMP Program necessary information for monitoring and oversight. ACL has shared this data and worked with HHS/OIG to develop SMP performance measures.

The HHS/OIG has collected SMP performance data and issued SMP performance reports since 1997. The information from the current collection is reported by the OIG to Congress and the public. This information is also used by ACL as the primary method for monitoring the SMP Projects.

This data collection will also support ACL in tracking performance outcomes and efficiency measures with respect to annual and long-term performance targets established in the Government Performance Results Modernization Act of 2010 (GPRMA). The Performance Data for the SHIP, SMP, and MIPPA, data collection will continue to provide data necessary to determine the effectiveness of the programs.

To support alignment with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation, ACL is adding three sexual orientation and gender identity (SOGI) items to this information collection. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

The proposed data collection tools may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the respondent burden hours to prepare and complete all reports associated with this collection will be hours. This estimate is based on the current data systems ability to aggregate data and generate reports. By modifying several forms ACL has reduced the overall burden and grantees will no longer have to generate reports outside of the newly created data system.

Form name	Estimated time in minutes	Fraction of an hour
SMP Media Outreach & Education	4	0.0667
SMP Group Outreach & Education	4	0.0667
SMP Individual Interaction	5	0.0833
SMP Team Member Activity	5	0.0833
SMP Interaction	5	0.0833
SMP Team Member	7	0.1166
SHIP Media Outreach & Education	4	0.0667
SHIP Group Outreach & Education	4	0.0667
SHIP Team Member	7	0.1166
SHIP Beneficiary Contact	5	0.0833
SHIP Training Form	6	0.10
SHIP Team Member Activity	7	0.1166
SHIP Training	4	0.0667

ESTIMATED ANNUALIZED BURDEN HOURS

Grantee respondent type	Form/report name	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
SMP	Media Outreach & Education	216	46	4	662.4
SMP	Group Outreach & Education	6,935	4	4	1,849.33
SMP	Individual Interaction	6,935	41	5	23,694.58
SMP	Team Member	216	31	5	558
SMP	SIRS Team Member Activity	216	31	5	558
SMP	SMP Interaction	6,935	2	5	1,155.83
*SMP	OIG Report	*0	0	0	0
*SMP	Time Spent Report	*0	0	0	0
SHIP/MIPPA	Media Outreach & Education	3,750	15	4	3,750
SHIP/MIPPA	Group Outreach & Education	3,750	15	4	3,750
SHIP/MIPPA	SHIP Team Member	216	75	5	1,350
SHIP/MIPPA	Beneficiary Contact	15,000	233	5	291,250
*SHIP/MIPPA	SHIP Performance Report	*0	0	0	0
*SHIP/MIPPA	Resource Report	*0	0	0	0
*SHIP/MIPPA	MIPPA Performance Report	*0	0	0	0
SHIP/MIPPA	SHIP Team Member Activity	216	40	7	1,008
*SHIP/SMP/MIPPA	Summary Reports	*0	0	0	0
*SHIP/MIPPA	Part D Enrollment Outcomes Report	*0	0	0	0
Totals		49,769	4,042,681		345,646.47

*This data collection activity is an automated task in the system and does not compute to an estimate of time for burden.

Dated: October 19, 2023.

Alison Barkoff,

Senior official performing the duties of the Administrator and the Assistant Secretary for Aging.

[FR Doc. 2023–23563 Filed 10–24–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0584]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Standardized Reporting Forms for Food and Drug Administration Federally Funded Public Health Projects and Agreements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 24, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0909. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Standardized Reporting Forms for FDA Federally Funded Public Health Projects

OMB Control Number 0910–0909—Revision

This information collection supports federally funded public health projects administered by FDA. As part of FDA's efforts to protect the public health, we work collaboratively with State partners to enhance oversight of FDA-regulated products. Consistent with applicable regulations, we collect information related to an awardee's progress in completing agreed-upon performance metrics.

To increase our efficiency in evaluating program effectiveness and return-on-investment (ROI)/return-on-value (ROV) for the federally funded projects that we administer, we developed and established the use of digital forms under a pilot project information collection that contain tailored, standardized questions to capture data elements necessary to measure/track ROI/ROV, best practices, and program effectiveness. Forms are submitted by email and aggregated into dynamic reports by program for FDA evaluators allowing for quick comparison of program data between report periods and comparable metrics to evaluate program success or lack of performance in a timely manner. The pilot project confirmed that the use of standardized forms will reduce the time required by awardees in completing and submitting data collection reports. Additional findings include: a drastic increase in data quality, a significant reduction in the number of follow-ups needed to request additional information or clarify responses, and the ability to aggregate data quickly into a useable format for programmatic review and respond effectively to requests for program performance data. Coupled with positive feedback from FDA data users and external partners received during the pilot project, we considered the pilot phase a success and plans to continue use of tailored forms for program performance metrics including ROI/ROV data for its current and new funded public health projects moving forward.

Respondents complete an initial report and progress/performance reports which include data fields to identify the award project and contact person and directs specific questions to respondents regarding project and progress updates. As the public, partnering awardees, and FDA data users provide feedback through various opportunities, we will revise the reports tailoring for project specificity and purpose, to include, but not limited to, improvements in metrics analysis, question clarity, and formatting and design, such as drop-down menu selections and potential common response indicators. This method will ensure a continuation of the reduced time for respondents and allow us to more quickly process information and determine impacts at the Agency level as observed during the pilot. As information will be requested of actively funded projects, it still may become necessary to request additional information for a particular project to complete the performance evaluation(s) in a timely manner. To ensure data is sufficient, on a case-by-case basis, FDA anticipates a need for follow-up questionnaire(s) to supplement the progress reports and as instruments of collection are developed and fine-tuned through this effort. We do not have any specific adjustments or revisions to the approved forms at this time, other than the inclusion of PRA statements. Due to the evolving nature of public health issues, non-substantive modifications may be made to the forms during the 3-year approval period of this information collection. Prior to implementation, such modifications will be submitted to OMB for approval, and they will be made available for public review and comment during the standard information collection extension/revision approval process.

In the **Federal Register** of July 29, 2021 (86 FR 40853), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. Subsequent to the close of the 60-day notice public comment period, additional comments were received from internal and external stakeholders through our solicitation of feedback external to the PRA public comment opportunity. Upon our review, these comments were generally supportive of the piloted forms, and many contained suggestions for additional technical improvements. At the same time, none of the comments suggested any change to our estimated burden and we have therefore retained those currently submitted. While we are not making changes to the forms with this submission, we plan to implement changes based on the feedback received as part of the continuous improvement process for the information collection over the next few years.

Description of Respondents: Respondents to the information collection are State, local, Tribal and Territorial governments who are recipients of FDA-funded projects who submit required information to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Awardee activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Initial Report; Update Reports; Supplement Reports (if applicable).	330	3.303	1,090	28.17 hours ..... (28 hours and 10 minutes)	30,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that 330 respondents will participate in FDA funded projects and agreements annually and will submit 2 to 4 reports within a single yearlong budget period (Table 1). To ensure adequate reporting will be achieved over the course of these projects, the option for a supplement report is included in the estimated reporting burden; however, the need for these reports will be determined on a case-by-case basis with the FDA project manager. The estimated burden for each of the individual reporting activities was calculated based on the annual number of submissions and distributed among respondents.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Awardee activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Initial Report, Updated Reports, or Supplement Reports (if applicable).	330	3.303	1,090	0.5 hours ..... (30 minutes)	545

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Recordkeeping activities include storing and maintaining records related to submitting a request to participate in the project and compiling reports. Respondents should use current record retention capabilities for electronic or paper storage to achieve these activities. We assume it will take 0.5 hour/year to ensure the documents related to submitting a request to participate in the program are retained properly according to their existing recordkeeping policies, but no less than 3 years, as recommended by FDA (Table 2). The estimated burden for each of the individual reporting activities was calculated based on the annual number of submissions and distributed among respondents.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Awardee-entity activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Coordination with partnering entities related to Initial Report, Update Reports, and Supplement Report (if applicable).	200	7	1,400	8	11,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

For those funded projects that involve a participant composed of partnering entities in the program, FDA is taking into consideration the time that partnering entities will spend coordinating with each other. We estimate that 200 respondents will work with their respective partnering entities and the average number of partnering entities will be 2. We assume each respondent will spend 8 hours coordinating with each partnering entity on each response for an estimated 7 responses or reports each (Table 3). The estimated burden for each of the individual reporting activities was calculated based on the annual number of submissions and distributed among respondents.

We are requesting OMB approval for conclusion of the pilot project and continued use of the forms for programmatic data collection needs. There are no adjustments or revisions to the estimated burden. However, this request results in an adjustment decrease in the number of responses, to correct data-entry errors in the database related to the previous submission to OMB.

Dated: October 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23560 Filed 10–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4259]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export Certificates for Food and Drug Administration Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on export certificates for FDA regulated products.

DATES: Either electronic or written comments on the collection of information must be submitted by December 26, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 26, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–4259 for ''Export Certificates for FDA Regulated Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Export Certificates for FDA Regulated Products

OMB Control Number 0910–0498—Extension

This information collection supports the implementation of FDA statutory and regulatory provisions and related forms. Sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(e) and 382) pertain to the export of FDA-regulated products and are intended to ease restrictions on exportation. The provisions also require the Agency to issue written export certifications within 20 days of any request. To offset Agency resource expenditures for processing certifications requests, the statute provides that FDA may charge firms a fee not to exceed $175.

The information collection contains five FDA forms (Form FDA 3613, 3613a, 3613b, 3613c, and 3613g) related to exporting FDA-regulated products. A description of each form is provided in table 1. To obtain a fillable PDF file of each form, visit *https://www.fda.gov/about-fda/reports-manuals-forms/forms,* and type ''3613'' in the search field. We accept online applications for export certificates for specific product areas through web-based application systems. To access these web-based application systems, visit the FDA Industry Systems web page at *http://www.access.fda.gov.* We are in the process of revising the forms to remove paper submission instructions for specific product areas where paper submissions are no longer accepted.

To learn more about how to complete these forms and general information for specific product areas, visit: *https://www.fda.gov/vaccines-blood-biologics/exporting-cber-regulated-products/fda-forms-certificates-exporting* and *https://www.fda.gov/vaccines-blood-biologics/exporting-cber-regulated-products/how-complete-fda-export-certificate-forms; https://www.fda.gov/drugs/human-drug-exports/electronic-certificates-pharmaceutical-product-general-information; https://www.fda.gov/medical-devices/importing-and-exporting-medical-devices/exporting-medical-devices;* and *https://www.fda.gov/animal-veterinary/import-exports/exporting-animal-feed-and-animal-drugs.*

TABLE 1—CERTIFICATES AND USES

Type of Certificate/Form FDA#	Use
Form FDA 3613: ''Supplementary Information Certificate to Foreign Government Requests''. ''Exporter's Certification Statement Certificate to Foreign Government''. ''Exporter's Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)''.	For the export of products legally marketed in the United States
Form FDA 3613a: ''Supplementary Information Certificate of Exportability Requests''. ''Exporter's Certification Statement Certificate of Exportability''.	For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the FD&C Act
Form FDA 3613b: ''Supplementary Information Certificate of a Pharmaceutical Product''. ''Exporter's Certification Statement Certificate of a Pharmaceutical Product''.	Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amending, or reviewing a license
Form FDA 3613c: ''Supplementary Information Non-Clinical Research Use Only Certificate''. ''Exporter's Certification Statement (Non-Clinical Research Use Only)''.	For the export of a non-clinical research use only product, material, or component that is not intended for human use and which may be marketed in, and legally exported from the United States under the FD&C Act
Form FDA 3613g: ''Certificate to Foreign Government for Devices Not Exported from the United States''.	For the shipping of devices not exported from the United States that may be legally marketed in the United States.

Appropriate centers within FDA review product information submitted by firms in support of the firms' certificate requests. We rely on respondents to certify their compliance with all applicable requirements of the FD&C Act both at the time the certification request is submitted to FDA and at the time the certification is submitted to the respective foreign government. Information regarding FDA's Export Certificates may be found on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/fda-export-certificates.*

We estimate the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research (CBER)	2,344	1	2,344	1	2,344
Center for Devices and Radiological Health	11,175	1	11,175	2	22,350
Center for Drug Evaluation and Research (CDER)	6,981	1	6,981	1	6,981
Center for Veterinary Medicine (CVM)	1,618	1	1,618	1	1,618
Total					33,293

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a current evaluation of the information collection, we have adjusted the burden estimate. Our estimated burden for the information collection reflects an overall increase of 2,687 hours and a corresponding increase of 2,687 responses. CDER has instituted electronic certificates of pharmaceutical product (eCPP) to streamline the application process and reduce the time from receipt to issuance of export certificates. The increase in CDER export application requests is attributable to the implementation of the eCPP and an increase in drug exports. The increase is offset by a decrease in CVM and CBER export applications attributable to consequences of the pandemic.

Dated: October 20, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23561 Filed 10–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board Public Meeting

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Biodefense Science Board (NBSB) will publicly meet using an online format on Thursday, November 30, 2023 (12:30 to 4:00 p.m. ET). Notice of the meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA). The NBSB provides expert advice and guidance to the U.S. Department of Health and Human Services (HHS) regarding current and future chemical, biological, radiological, and nuclear threats, as well as other matters related to disaster preparedness and response. The Administration for Strategic Preparedness and Response (ASPR) manages and convenes the NBSB on behalf the Secretary of HHS. The NBSB will discuss and vote on two sets of recommendations related to COVID–19 pandemic lessons, *Project NextGen* vaccine and therapeutic products, and disaster preparedness training.

Procedures for Public Participation: The public and expert stakeholders are invited to observe the meeting. Pre-registration (Zoom) is required. Anyone may submit questions and comments to the NBSB by email (*NBSB@hhs.gov*) before the meeting. American Sign Language translation and Communication Access Real-Time Translation will be provided.

Representatives from industry, academia, health professions, health care consumer organizations, non-federal government agencies, or community-based organizations may request up to seven minutes to speak directly to the Board. Requests to speak to the Board will be approved in consultation with the Board Chair and based on time available during the meeting. Requests to speak to the NBSB during the public meeting must be sent to *NBSB@hhs.gov* by close of business on November 23, 2023. Please provide the full name, credentials, official position(s), and relevant affiliations for the speaker and a brief description of the intended topic. Presentations that contain material with a commercial bias, advertising, marketing, or solicitations will not be allowed. A meeting summary will be available on the NBSB website post-meeting.

FOR FURTHER INFORMATION CONTACT: CAPT Christopher Perdue; NBSB Designated Federal Official, (202) 480–7226; *NBSB@HHS.GOV.*

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–23532 Filed 10–24–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0092]

Agency Information Collection Activities; Revision of a Currently Approved Collection: E-Verify Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 24, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0023. All submissions received must include the OMB Control Number 1615–0092 in the body of the letter, the agency name and Docket ID USCIS–2007–0023.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 29, 2023, at 88 FR 42091, allowing for a 60-day public comment period. USCIS received two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0023 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit. E-Verify is a web-based system which allows employers to electronically confirm the employment eligibility of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection E-Verify Program for New Users Entry (Employer Enrollment) is 66,330 and the estimated hour burden per response is 2.26 hours; the estimated total number of respondents for the information collection E-Verify Program for New User Training is 66,330 and the estimated hour burden per responses is 1 hour; the estimated total number of respondents for the information collection E-Verify Program for Existing User Annual Training is 358,670 and the estimated hour burden per responses is 0.5 hours; the estimated total number of respondents for the information collection E-Verify Program for Queries and Initial Cases is 235,985 and the estimated hour burden per responses is 0.121 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,966,051 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,887,000.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23618 Filed 10–24–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6426–N–01]

Small Area Fair Market Rents in the Housing Choice Voucher Program Metropolitan Areas Subject to Small Area Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research and the Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In 2016, HUD completed a final rule requiring the use of Small Area Fair Market Rents (SAFMRs) in certain metropolitan areas to use in the administration of the Housing Choice Voucher (HCV) program. These areas were based on certain selection criteria and values. These criteria are: at least 2,500 HCVs must be under lease in the metropolitan FMR area; at least 20 percent of the standard quality rental stock within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; the percentage of voucher families living in concentrated low-income areas within the area must be at least 25 percent; the measure of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55); and the vacancy rate for the metropolitan area is higher than 4 percent. This notice lists the metropolitan areas that will be subject to Small Area FMRs based on the final rule's requirement that HUD ''make new area designations every 5 years thereafter as new data becomes available.''

DATES: *Implementation date:* October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to Peter Kahn, Associate Deputy Assistant Secretary, Office of Policy Development, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8106, Washington, DC 20410, telephone number (202) 402–2409; or via email at *SAFMR_Rule@hud.gov.* 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.*

This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically from *https://www.federalregister.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2016, HUD published a final rule entitled ''Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs'' (81 FR 80567) (''final rule'' or ''Small Area FMRs final rule''). As HUD explained in the 2016 Rule, Small Area FMRs complement HUD's other efforts to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas. In the final rule, HUD announced amendments to HUD's FMR regulations applicable to the HCV program. Also on November 16, 2016, HUD published a **Federal Register** notice entitled ''Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents'' (81 FR 80678) (''November 2016 notice'') which established the values for the selection criteria and listed the initial metropolitan areas that are subject to SAFMRs implemented through the Small Area FMRs final rule.

The final rule included a requirement that HUD make new area designations every 5 years as new data becomes

available. Because the PHAs operating in the areas mandated in the November 2016 notice began using SAFMRs beginning on April 1, 2018, it is now appropriate for HUD to undertake the evaluation of new data and identify additional areas where SAFMRs will be required.

II. Policy Development Process and Stakeholder Engagement

Staff from the Office of Policy Development and Research (PD&R) and the Office of Public and Indian Housing (PIH) engaged in a process of stakeholder outreach and policy development to learn about the implementation of SAFMRs. HUD engaged local PHAs, researchers, and key stakeholders, including fair housing groups, to better understand PHAs' implementation of SAFMRs and their impact on families.

PD&R and PIH held listening sessions with PHAs in several metropolitan areas that were required to adopt SAFMRs under the 2016 rule. Overall, HUD heard from 19 PHAs across these metropolitan areas, as well as from a statewide agency managing the Housing Choice Voucher program.

HUD also met with researchers conducting research on the impacts of SAFMRs. PD&R has provided data licenses to four research teams to conduct SAFMR analyses, and two of those teams presented initial findings using HUD's administrative data. (The other research teams do not yet have research findings to share.)

In the policy development process, HUD sought answers to two basic categories of questions:

(1) What challenges did PHAs experience in the implementation and administration of SAFMRs? How could HUD improve the policy to make implementation easier?

(2) How did the use of SAFMRs impact families with vouchers? Is there evidence that the use of SAFMRs expanded housing choices and opportunity, particularly their ability to access higher-rent, lower-poverty areas?

HUD listening sessions with PHAs focused on their experience with implementing SAFMRs, including administrative burdens. PHAs emphasized that implementation required changes to IT systems, staff training, revision of materials and briefings for tenants, and a process of landlord education. While experience varied, many PHAs found the implementation challenging in one or more of these areas, at least initially. Many PHAs also felt that the rollout of the initial SAFMRs happened too quickly, and that PHAs should have at least six months—or perhaps a year—to implement the program. Nearly all PHAs also emphasized the importance of additional training and technical assistance to implement SAFMRs.

The academic research teams' preliminary data analysis using HUD's administrative records identified the following key findings:

New voucher recipients were more likely to move to low-poverty neighborhoods after SAFMRs were implemented. The program reduced their overall concentration in low-rent, high-poverty neighborhoods. This finding held across demographic groups, including households of color and those with children. However, the magnitude of these positive effects is modest. These findings for newly admitted families are consistent with those from prior studies, such as HUD's 2017 interim evaluation of the SAFMR demonstration at five sites. The latter study, however, found much larger increases in the share of existing voucher holders that moved to high-rent areas following SAFMR implementation.

SAFMRs did not affect the success of households with vouchers in leasing up (*i.e.,* the number of households leasing up within 180 days), even for high-barrier households or those living in zip codes where SAFMRs were lower than FMRs.

These researchers have not yet examined the financial impacts of SAFMRs on PHAs, including the average HAP paid by PHAs. HUD's 2017 study found, however, that average per unit costs (PUCs) and housing assistance payments (HAPs) declined after SAFMR implementation, as increased costs in higher-rent areas were more than offset by lower costs in lower-rent areas.

HUD's staff undertook an analysis of PHA PUC information between 2015 and 2022. While the average PUC in the mandated metropolitan areas is higher than the average PUC in 2 control groups identified as part of the analysis, there is little discernible difference in the annual change in average PUC in each of these areas. In other words, PUCs did not rise more quickly in mandated metropolitan areas than in other metropolitan areas. The control groups where those areas that met four of the five criteria and three of the five criteria in 2016.[1]

[1] Note: All areas used as control groups met the 2,500 voucher units under lease criteria.

III. Selection Parameters for Identifying Small Area FMRs Area

Following the outreach process, HUD's analysis of administrative data and the evaluation of updated selection criteria, HUD deliberated on the appropriate next steps. Following these deliberations, HUD committed to provide: adequate technical assistance, opportunities for peer-to-peer training, additional program materials, and additional training for HUD field office staff.

Through this notice, HUD is affirming the same selection values used to determine the first cohort of metropolitan FMR areas subject to SAFMRs for use in the administration of tenant-based assistance under the HCV program in this next round of determinations.[2] Metropolitan FMR areas meeting the following requirements will be subject to Small Area FMRs consistent with 24 CFR 888.113(c):

(i) There are at least 2,500 HCVs under lease, counted using HUD administrative data as of December 31, 2022;

(ii) At least 20 percent of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR, measured using HUD's special tabulations of American Community Survey (ACS) data through the distribution of Adjusted Standard Quality Rental Units, and FY 2023 Fair Market Rents; [3]

(iii) The percentage of voucher families living in concentrated low-income areas within the area must be at least 25 percent calculated using 2023 designations of Qualifies Census Tracts and 2021 ACS 5-year tabulations of renter occupied units;

(iv) The measure of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55) using the 2023 designations of Qualified Census Tracts; and

(v) The vacancy rate for the metropolitan area is higher than 4 percent calculated as the average of the vacancy rates for each area calculated

[2] 24 CFR 888.113(c)(4) states, in part, that SAFMR designations are permanent; therefore, the first cohort of areas remain required SAFMR areas and were not reevaluated.

[3] For criteria (ii)–(iv) the specifics of how the criteria is calculated is found in the Notice of Proposed Rulemaking, available at *https://www.huduser.gov/portal/datasets/fmr/fmr2016p/SAFMR-Notice-Proposed-Rule.pdf.*

from the 2018, 2019 and 2021 1-year ACS tabulations.[4]

The additional metropolitan FMR Areas that meet these requirements are as follows:

Akron, OH MSA
Augusta-Richmond County, GA-SC HUD Metro FMR Area
Beaumont-Port Arthur, TX MSA
Birmingham-Hoover, AL HUD Metro FMR Area
Buffalo-Cheektowaga-Niagara Falls, NY MSA
Charleston-North Charleston, SC MSA
Chattanooga, TN-GA MSA
Cincinnati, OH-KY-IN HUD Metro FMR Area
Cleveland-Elyria, OH MSA
Columbus, OH HUD Metro FMR Area
Dayton-Kettering, OH MSA
Des Moines-West Des Moines, IA HUD Metro FMR Area
Detroit-Warren-Livonia, MI HUD Metro FMR Area
Fort Wayne, IN MSA
Greensboro-High Point, NC HUD Metro FMR Area
Harrisburg-Carlisle, PA MSA
Indianapolis-Carmel, IN HUD Metro FMR Area
Jersey City, NJ HUD Metro FMR Area
Kansas City, MO-KS HUD Metro FMR Area
Knoxville, TN HUD Metro FMR Area
Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area
Louisville, KY-IN HUD Metro FMR Area
Memphis, TN-MS-AR HUD Metro FMR Area
Miami-Miami Beach-Kendall, FL HUD Metro FMR Area
Mobile, AL HUD Metro FMR Area
Montgomery, AL MSA
Nashville-Davidson—Murfreesboro—Franklin, TN HUD Metro FMR Area
Oklahoma City, OK HUD Metro FMR Area
Omaha-Council Bluffs, NE-IA HUD Metro FMR Area
Orlando-Kissimmee-Sanford, FL MSA
Oxnard-Thousand Oaks-Ventura, CA MSA
Phoenix-Mesa-Scottsdale, AZ MSA
Raleigh, NC MSA
San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area
Seattle-Bellevue, WA HUD Metro FMR Area
St. Louis, MO-IL HUD Metro FMR Area
Tucson, AZ MSA
Tulsa, OK HUD Metro FMR Area
Virginia Beach-Norfolk-Newport News, VA-NC HUD Metro FMR Area
Wichita, KS HUD Metro FMR Area
Winston-Salem, NC HUD Metro FMR Area

Consistent with the first cohort of Small Area FMR designated areas and as stated in 24 CFR 888.113(c)(4), these designations are permanent.

IV. Additional Information

Since the first cohort of mandatory Small Area FMR areas were required to begin using Small Area FMRs in the administration of the tenant-based voucher programs in April of 2018, this notice fulfills HUD's 5-year requirement under the Small Area FMR final rule. Setting the implementation date of this notice as October 1, 2024, provides sufficient time for PHAs operating in the newly announced required areas to acquire sufficient training and provides time for further market analysis to prepare to set their payments standards using Small Area FMRs instead of metropolitan area-wide FMRs. Finally, setting an implementation date of October 1, 2024, provides that PHAs operating in this second cohort of mandatory areas, under normal voucher program operations, must have their payment standards aligned with the Small Area FMRs in their operating areas by January 1, 2025. Should a PHA operating in these 41 areas wish to begin using Small Area FMRs in the administration of their voucher programs prior to October 1, 2024, they will need to seek HUD permission pursuant to an opt-in decision by a PHA under 24 CFR 888.113(c)(3): ''A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD's Office of Public and Indian Housing (PIH) through written request to PIH.'' Until the SAFMRs take effect for PHAs in the 41 metropolitan areas identified in this Notice, any decision by a PHA to use SAFMRs is an opt-in decision, consistent with 24 CFR 88.113(c)(3) and Section 5(b) of PIH Notice 2018–01.

If a PHA operating in one these 41 areas is unable to implement Small Area FMRs within the timeframes provided in this notice, they may petition HUD for a temporary exemption as specified in 24 CFR 888.113 (c)(4), which states in part, ''HUD may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of Small Aree FMRs, when HUD by notice make a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs are: (i) A Presidentially declared disaster area that results in the loss of a substantial number of housing units; (ii) A sudden influx of displaced households needing permanent housing; or (iii) Other events as determined by the Secretary.'' For additional guidance, PHAs who want to petition HUD for an exemption should refer to section 9 of PIH Notice 2018–01, available at *https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-01.pdf.*

Solomon J. Greene,

Principal Deputy Assistant Secretary for Policy Development and Research.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2023–23685 Filed 10–23–23; 4:15 pm]

BILLING CODE 4210–67–P

[4] The calculation of the vacancy rate is defined in the Final Rule, available at *https://www.huduser.gov/portal/datasets/fmr/fmr2016f/SAFMR-Final-Rule.pdf.*

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24NN00TH3L700, OMB Control Number 1028–NEW]

Agency Information Collection Activities; Central Flyway Online Goose Harvest Assessment

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 26, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW Central Flyway Goose Harvest Assessment in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jay VonBank by email at *jvonbank@usgs.gov,* or by telephone at (701) 368–0177. 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: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to

respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: To estimate the species and age composition of U.S. goose harvest, the U.S. Fish and Wildlife Service (FWS) annually conducts two separate surveys from a sample of hunters in each flyway: a Parts Collection Survey (PCS) used to identify age and species of goose and the Migratory Bird Harvest Survey (*i.e.,* Diary Survey) to estimate the total number of geese harvested. Data from each survey are then combined post hoc to estimate species- and age-specific harvests. Harvest data are then incorporated into models to estimate population abundance for many goose species. These monitoring efforts are essential to estimating annual harvest and subsequent population size, but FWS managers have identified several potential biases that need to be addressed. Information provided by hunters via the PCS may introduce potential biases. Due to liberalization in bag limits and hunting-season lengths, as well as PCS participation fatigue, some participants only submit a subset of daily harvested waterfowl or do not request additional envelopes to continue participation once the initial supply of envelopes is exhausted (*i.e.,* completeness bias). Thus, hunter-collected samples for the PCS are likely temporally biased toward early in the hunting season (*e.g.,* hunters quit participating during the hunting season, or they only submit as many samples as the initial envelopes provided allow, with a decreasing number of hunters requesting additional envelopes). Therefore, fewer parts are submitted later in the season, resulting in a temporal harvest bias in addition to a quantity- and completeness bias. Our proposed study aims to integrate both surveys into one easily accessible, robust data collection platform that reduces the burden on hunters and is expected to increase participation. In an effort to develop and evaluate an additional survey to the PCS and Diary Survey that may help to alleviate the concerns outlined above, we propose the development of an online/mobile application survey platform to allow goose harvest reporting of species and age directly from hunters without the need to participate in two surveys or to collect and mail parts. We propose a short-term study within Central Flyway states on the design, implementation, comparability, and efficacy of an online survey methodology. This study will determine if such a survey is feasible to accurately estimate future goose harvests and reduce the identified biases, costs, burden, and time involved in the current PCS and Diary surveys. Understanding biases and assumptions in current harvest survey protocols has direct management implications as many goose harvest strategies are predicated on harvest and population estimates. Developing alternative methods to address these biases are necessary to ensure accurate, reliable, and increasingly precise estimates of harvest and abundance. Furthering our understanding of assumptions related to current practices and surveys will aid in improving the management process for North American goose populations.

Title of Collection: Central Flyway online goose harvest assessment.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public.

Total Estimated Number of Annual Respondents: 3,552.

Total Estimated Number of Annual Responses: 4 per respondent (total of 14,208 annual responses).

Estimated Completion Time per Response: 2 minutes.

Total Estimated Number of Annual Burden Hours: 474 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Frequency Once annually.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Robert A Gleason,

Northern Prairie Wildlife Research Center, Center Director, Midcontinent Region, USGS.

[FR Doc. 2023–23533 Filed 10–24–23; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[24XD4523WS/DWSN00000.000000/DS61500000/DP.61501]

Notice of Public Meeting of the Invasive Species Advisory Committee

AGENCY: National Invasive Species Council, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that a meeting of the Invasive Species Advisory Committee (ISAC) will meet as indicated below.

DATES: The Invasive Species Advisory Committee will convene in-person on Monday, November 13, 2023, 9:00 a.m.–5:00 p.m. (ET); Tuesday, November 14, 2023, 9:00 a.m.–5:00 p.m. (ET); and, Wednesday, November 15, 2023; 9:00 a.m.–1:00 p.m. (ET). The general session proceedings will also be streamed virtually via Zoom webinar. NOTE: Virtual access to the general session portions of the meeting will be in ''listen only'' mode. Registration is required at: *https://forms.office.com/g/5TwFXSkEpf.*

ADDRESSES: U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240. Meeting will be held in the North Penthouse. All registered in-person attendees must pass through

security screening upon entering the facility.

FOR FURTHER INFORMATION CONTACT: For information concerning attending the ISAC meeting, submitting written comments to the ISAC, or requesting to address the ISAC, contact Kelsey Brantley, NISC Operations Director and ISAC Coordinator, National Invasive Species Council Staff, telephone (202) 577–7012; fax: (202) 208–4118, or email *kelsey_brantley@ios.doi.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose of the ISAC is to provide advice to the NISC, as authorized by Executive Orders 13112 and 13751, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of NISC is to provide national leadership regarding invasive species issues.

The purpose of an in-person meeting on Monday, November 13, 2023 through Wednesday, November 15, 2023 is to convene the full ISAC to finalize and formally approve deliverables developed by its subcommittees on three (3) topics requested by NISC: (1) the impacts of invasive species on underserved communities; (2) the intersection of climate change and invasive species; and, (3) an assessment of national priorities related to invasive species.

Meeting Agenda: The meeting agenda will consist of an opening session with remarks from NISC member agencies, updates on priority NISC and NISC member agency activities, discussion of outputs by the three subcommittees, and consideration of new issues for ISAC input and advice. Opportunities for public comment will be provided before the conclusion of each meeting day.

The final agenda and other reference documents for discussion during the meeting will be available for public viewing as they become available, but no later than 48 hours prior to the start of the meeting at *https://www.invasivespecies.gov.*

Meeting Registration: All meeting participants and interested members of the public must register at *https://forms.office.com/g/5TwFXSkEpf* to attend the meeting in-person or observe the general session virtually. Due to the limited capacity at the meeting venue, and limited connections available for virtual observation, individuals must register no later than Friday, November 10, 2023; 3:00 p.m. (ET).

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Registration is required (see *Meeting Registration* above). Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact Kelsey Brantley at *kelsey_brantley@ios.doi.gov,* 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.

Public Comment: Interested members of the public may provide either oral or written comments to ISAC for consideration. Oral comments may be given during designated times as specified in the meeting agenda. Written comments must be submitted by email to Kelsey Brantley at *kelsey_brantley@ios.doi.gov,* no later than Friday, November 10, 2023; 3:00 p.m. (ET). All written comments will be provided to members of the ISAC. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to Kelsey Brantley at *kelsey_brantley@ios.doi.gov,* up to 30 days following the meeting.

All comments will be made part of the public record and will be electronically distributed to all ISAC members. The detailed meeting minutes will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Stanley W. Burgiel,

Executive Director, National Invasive Species Council.

[FR Doc. 2023–23611 Filed 10–24–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO45 MO4500174625]

National Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for 16 of the Bureau of Land Management's (BLM) statewide and regional Resource Advisory Councils (RAC) that have vacant positions or members whose terms are scheduled to expire. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within the geographic areas for which the RACs are organized.

DATES: All nominations must be received no later than November 24, 2023.

ADDRESSES: Nominations and completed applications should be sent to the appropriate BLM offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Carrie Richardson, BLM Office of Communications, at telephone: (202) 208–5259, email: *crichardson@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and addressing issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by

FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784. The RACs include the following three membership categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water; represent Indian Tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: *https://www.blm.gov/sites/default/files/docs/2022-05/BLM-Form-1120-19_RAC-Application.pdf*.

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Nominations and completed applications for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Melinda Bolton, BLM Alaska State Office, 222 W 7th Avenue #13, Anchorage, AK 99513; Phone: (907) 271–3342; Email: *mbolton@blm.gov*.

California

California Desert District Advisory Council

Michelle Van Der Linden, BLM California Desert District Office, 1201 Bird Center Drive, Palm Springs, CA 92262; Phone: (951) 567–1531; Email: *mvanderlinden@blm.gov*.

Northern California District RAC

Jeff Fontana, BLM Eagle Lake Field Office, 2550 Riverside Drive, Susanville, CA 96130; Phone: (530) 252–5332; Email: *jfontana@blm.gov*.

Idaho

Idaho RAC

MJ Byrne, BLM Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709; Phone (208) 373–4006; Email: *mbyrne@blm.gov*.

Montana and Dakotas

Missouri Basin RAC

Mark Jacobsen, BLM Eastern Montana/Dakotas District Office, 111 Garryowen Road, Miles City, MT 59301; Phone: (406) 233–2831; Email: *mjacobse@blm.gov;* or Gina Baltrusch, BLM North Central Montana District Office, 1220 38th Street N, Great Falls, MT 59405; Phone: (406) 791–7778; Email: *gbaltrusch@blm.gov*.

Western Montana RAC

David Abrams, BLM Butte Field Office, 106 North Parkmont, Butte, MT 59701; Phone: (406) 533–7617; Email: *dabrams@blm.gov*.

Nevada

Mojave-Southern Great Basin RAC

Kirsten Cannon, BLM Southern Nevada District Office, 4701 North Torrey Pines, Las Vegas, NV 89130; Phone: (702) 515–5057; Email: *k1cannon@blm.gov*.

Sierra Front-Northern Great Basin RAC

Lisa Ross, Public Affairs Specialist, BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701; phone: (775) 885–6107; Email: *lross@blm.gov*.

New Mexico

Northern New Mexico RAC

Jamie Garcia, BLM Albuquerque District Office, 100 Sun Avenue NE, Albuquerque, NM 87109; Phone: (505) 761–8787; Email: *jagarcia@blm.gov*.

Southern New Mexico

Wendy Brown, BLM Roswell Field Office, 2909 West 2nd Street, Roswell, NM 88201; Phone: (575) 627–0259; Email: *wabrown@blm.gov*.

Oregon/Washington

Eastern Washington RAC

Tom Beaucage, Border Field Office, 1103 N Fancher Road, Spokane Valley, WA 99212; Phone: (509) 536–1263; Email: *tbeaucage@blm.gov*.

John Day-Snake RAC

Larisa Bogardus, Public Affairs Officer, BLM Vale District Office, 3100 H St., Baker City, OR 97814; Phone: (541) 523–1407; Email: *lbogardus@blm.gov*.

Southeast Oregon RAC

Larisa Bogardus, Public Affairs Officer, BLM Vale District Office, 3100 H St., Baker City, OR 97814; Phone: (541) 523–1407; Email: *lbogardus@blm.gov*.

Western Oregon

Megan Harper, BLM Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459; Phone: (541) 751–4353; Email: *m1harper@blm.gov*.

Utah

Utah RAC

Angela Hawkins, BLM Green River District Office, 170 South 500 East, Vernal, UT 84078; Phone: (435) 781–2774; Email: *ahawkins@blm.gov*.

Wyoming

Wyoming RAC

Azure Hall, BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009; Phone: (307) 335–6208; Email: *ahall@blm.gov*.

(Authority: 43 CFR 1784.4–1)

Jeffrey Krauss,

Assistant Director for Communications.

[FR Doc. 2023–23537 Filed 10–24–23; 8:45 am]

BILLING CODE 4331–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO4500174625]

National Call for Nominations for Site-Specific Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for six of the Bureau of Land Management's (BLM) citizens' advisory committees affiliated with specific sites on the BLM's National Conservation Lands. The six advisory committees provide advice and recommendations to the BLM on the development and implementation of management plans in accordance with the statute under which the sites were established. The advisory committees covered by this request for nominations are identified below. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than November 24, 2023.

ADDRESSES: Nominations and completed applications should be sent to the appropriate BLM offices listed in the **SUPPLEMENTARY INFORMATION** section of this Notice.

FOR FURTHER INFORMATION CONTACT: Carrie Richardson, BLM Office of Communications, telephone: (202) 208–5259, email: *crichardson@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 Carrie Richardson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish citizen-based advisory committees that are consistent with the Federal Advisory Committee Act. The rules governing BLM Advisory Committees are found at 43 CFR 1784.

Individuals may nominate themselves or others for appointment by the Secretary. Nominees must be residents of the State in which the advisory council has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area covered by the advisory committees. Nominees should demonstrate a commitment to collaborative resource decision-making.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations. Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so. Nomination forms and instructions can be obtained for each committee from the points of contact listed below by mail, phone request, or online at *https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf.*

Nominees should note the interest area(s) they are applying to represent on their application. All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the Committee from any represented interests or organizations, a completed application, and any other information that speaks to the nominee's qualifications.

New Mexico

Rio Puerco Management Committee

Jamie Garcia, BLM Albuquerque District Office, 100 Sun Avenue NE, Albuquerque, NM 87109; Phone: (505) 761–8787; Email: *jagarcia@blm.gov.*

The Committee consists of 15 members that represent the Rio Puerco Watershed Committee; affected Tribes and Pueblos; the U.S. Forest Service; the Bureau of Reclamation; the U.S. Geological Survey; the Bureau of Indian Affairs; the U.S. Fish and Wildlife Service; the U.S. Army Corps of Engineers; the Environmental Protection Agency; the Natural Resources Conservation Service; the State of New Mexico, including the New Mexico Environment Department of the State engineer; affected local soil and water conservation districts; the Elephant Butte Irrigation District; a private landowner; and a representative of the public at large.

Oregon/Washington

Steens Mountain Advisory Council (SMAC)

Tara Thissell, BLM Burns District Office, 28910 Hwy 20 West, Hines, OR 97738; Phone: (541) 573–4519: Email: *tthissell@blm.gov*.

The SMAC consists of 12 members that are representative of the varied groups with an interest in the management of the Steens Mountain Cooperative Management and Protection Area (CMPA) including a private landowner in the CMPA; two persons who are grazing permittees on Federal lands in the CMPA; a person interested in fish and recreational fishing within the CMPA; a member of the Bums Paiute Tribe; two persons who are recognized environmental representatives, one of whom shall represent the State as a whole, and one of whom is from the local area; a representative of dispersed recreation; a recreational permit holder or a person who is a representative of a commercial recreation operation in the CMPA; a representative of mechanized or consumptive recreation; a person who has no financial interest in the CMPA, to represent statewide interests; and a non-voting State government liaison to the Council. One member will also serve as a Special Government Employee (SGE) as a person with expertise and interest in wild horse management on Steens Mountain. Please be aware that members selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://www.doi.gov/ethics/special-government-employees/financial-disclosure.* Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

San Juan Islands National Monument Advisory Committee (San Juan Islands MAC)

Michelle Brown, BLM Spokane District Office, 1103 N Fancher Road, Spokane Valley, WA 99212; Phone: (509) 536–1264; Email: *m2brown@blm.gov.*

The San Juan Islands MAC consists of 12 members that include two recreation and tourism representatives; two wildlife and ecological interest

representatives; two cultural and heritage interest representatives; two members of the public-at-large; a Tribal interests representative; a local government representative; an education and interpretation interests representative; and a private landowner representative.

Utah

Bears Ears National Monument Advisory Committee (Bears Ears MAC)

Rachel Wootton, BLM Monticello Field Office, 365 North Main, Monticello, UT 84535; Phone: (385) 235–4364; Email: *rwootton@blm.gov.*

The Bears Ears MAC includes 15 members. Thirteen members will serve as representatives of commodity, non-commodity, and local area interests, including an elected official from San Juan County; a representative of state government; a representative from the conservation community; a representative of livestock grazing permittees; three representatives representing Tribal interests; a representative of developed outdoor recreation activities; a representative of developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; a representative of dispersed recreation activities; a private landowner; a local business owner; and two representatives of the public-at-large. Two members will serve as SGEs for the following areas of expertise: paleontology and archaeology/history.

Grand Staircase-Escalante National Monument Advisory Committee (Grand Staircase-Escalante MAC)

David Hercher, BLM Paria River District Office, 669 South Highway 89A, Kanab, UT 84741; Phone: (435) 899–0415; Email: *dhercher@blm.gov.*

The Grand Staircase-Escalante MAC includes 15 members. Nine members will serve as representatives of commodity, non-commodity, and local area interests, including elected officials from Garfield and Kane County; a representative of State government; a representative of Tribal government with ancestral interest in the Monument; an educator; a conservationist; an outfitter and guide operating within the Monument, to represent commercial recreation activities in the Monument; a livestock grazing permittee operating within the Monument; and a representative of dispersed recreation. Six members will serve as SGEs for each of the following areas of expertise: paleontology; archaeology; geology; botany or wildlife biology; history or social science; and systems ecology.

San Rafael Swell Recreation Area Advisory Council

Angela Hawkins, BLM Green River District Office, 170 South 500 East Vernal, UT 84078; Phone: (435) 781–2774; Email: *ahawkins@blm.gov.*

The Council consists of seven members that represent the Emery County Commission; motorized recreational users; non-motorized recreational users; a grazing allotment permittee within the Recreation Area or wilderness areas designated; conservation organizations; a member with expertise in the historical uses of the Recreation Area; and an elected leader of a federally recognized Tribe that has significant cultural or historic connections to, and expertise in, the landscape, archeological sites, or cultural sites within the County.

(Authority: 43 CFR 1784.4–1)

Jeffrey Krauss,

Assistant Director for Communications.

[FR Doc. 2023–23536 Filed 10–24–23; 8:45 am]

BILLING CODE 4331–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NM_FRN_MO4500175396]

Public Land Order No. 7933; Correction and Extension of Public Land Order No. 7587 for Langmuir Principal Research Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order (PLO) No. 7587, which withdrew 852 acres of National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights, for an additional 20-year period. The purpose of this withdrawal is to protect the United States Forest Service-managed Langmuir Principal Research Site to study thundercloud mechanisms, lightning, and precipitation, for an additional 20 years. This order also corrects the legal description of, but does not change, the lands withdrawn.

DATES: This PLO takes effect on October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Carol Harris, Bureau of Land Management Socorro Field Office, Realty Specialist by phone at (575) 838–1298 or by email at *caharris@blm.gov* or Richard Wilhelm by phone at (505) 346–3842 or by email at *richard.wilhelm@usda.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The withdrawal extension is needed in order to maintain the protection of the Langmuir Principal Research Site, as originally authorized under PLO No. 7587 (68 FR 61231 (October 27, 2003)), and incorporated herein by reference, which withdrew 852-acres of National Forest System lands from location and entry under the United States mining laws to protect the Langmuir Principal Research Site on the Magdalena Ranger District of the Cibola National Forest from any adverse impacts of such activities. This PLO also serves to correct errors in the original legal land description described in PLO No. 7587 (68 FR 61231 (October 27, 2003)). Correction of the legal land description does not change the actual footprint of the withdrawal; correcting the description would bring it into conformance with the 2017 Bureau of Land Management Specifications for Descriptions of Land. The description for PLO No. 7587 also identifies the area of lands withdrawn as 852 acres. Government Land Office (GLO) surveys have identified the acreages for these lands and are the source for official acreage determinations. The GLO records indicate the exact acreage described contains 851.72 acres; therefore, the acres for this PLO have been updated to reflect accurate acreage for this withdrawal.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7587 (68 FR 61231 (2003)), which withdrew 852 acres of National Forest System lands from location and entry under the United States mining laws to protect the Langmuir Principal Research Site, is hereby extended for an additional 20-year period and the legal description and acres are corrected to read as follows:

New Mexico Principal Meridian, New Mexico

T. 4 S., R. 3 W.,
Sec. 5 Lot 2 and W½SW¼;

Sec. 6, Lots 5 and 6, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, NE¼, E½NW¼ and N½SE¼;
Sec. 8, W½NW¼ and NW¼SW¼.

The area described contains 851.72 acres.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

(Authority: 43 U.S.C. 1714(f))

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–23629 Filed 10–24–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036806; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Anthropology at Washington State University (WSU Museum of Anthropology) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Asotin County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Andrew Duff, Acting Director, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 335–3871, email *duff@wsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Anthropology at Washington State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Museum of Anthropology at Washington State University.

Description

In 1964, human remains representing, at minimum, three individuals were removed from Ten Mile Creek (45AS26), in Asotin County, WA. The site, which had cairn markers visible on its surface, had been heavily disturbed by looters. The occurrence of stone cairns, the flexed body position, and the types of associated funerary objects suggest that these burials date to the Late Prehistoric Period of about 2000–300 years ago.

The burial site is part of the Ten Mile Creek site complex, which includes large and small open camp sites, a series of storage pits, a rock shelter, and a fish wall. Ethnographic, oral traditions, and historic evidence associates this location with '*enetoyn,* a Nez Perce village. Excavations were led by WSU archeologists Charles Nelson and David Rice during the 1964 Asotin Reservoir Dam Survey under contract with the US Army Corps of Engineers, who hired WSU to conduct the survey after Congress authorized construction of the Asotin Dam Reservoir (Nelson and Rice 1969). While dam construction was later de-authorized and further work was discontinued, the WSU Museum of Anthropology has housed Asotin Dam Reservoir Survey collections, including those from 45AS26.

Three separate burials, numbered 1, 2, and 3, marked with surface and subsurface stone cairns, were excavated. Each burial contained a single individual placed in a flexed position. Burial 1 contained the human remains of an individual about 15 years old whose sex could not be determined. Red ochre as well as dentalia shell beads, a mussel shell pendant fragment, and a piece of muscovite mica, were found near the individual's head. A heavily fragmented cedar wood stake was also associated with Burial 1. Burial 2 contained the human remains of a child aged 6–8 years old whose sex could not be determined. The grave was marked by surface and sub-surface stone cairns. The body was in a fully flexed position and there were no associated funerary items. Burial 3 contained the human remains of a child 6–8 years old whose sex could not be determined. The grave was marked by a surface cairn containing flecks of charcoal and dentalia shell beads, including one incised bead. The body was placed in a flexed position. No known individuals were identified. The eight associated funerary objects include three lots consisting of dentalia shell beads, one incised dentalia shell bead, one mussel shell pendant fragment, one lot consisting of muscovite mica fragments, one lot consisting of cedar stake fragments, and one lot consisting of charcoal fragments.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes, which includes the Nez Perce Tribe and the Nez Perce Band of the Confederated Tribes of the Colville Reservation. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Museum of Anthropology at Washington State University has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Confederated Tribes of the Colville Reservation and the Nez Perce Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the Museum of Anthropology at Washington State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Museum of Anthropology at Washington State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23549 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036819; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from the State of Nebraska.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

Description

Human remains representing, at minimum, one individual were removed from the State of Nebraska. On an unknown date, a human cranium was given to, or collected by, Phil Cummings Orr. Phil Orr was an archeologist and Curator of Paleontology and Anthropology at the Santa Barbara Museum of Natural History in the 1930s–1960s. Subsequently, Orr donated to the Santa Barbara Museum of Natural History. Orr described the cranium as ''Mound builder cranium, Mound Builder, Nebraska.'' No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historical, and other information, or expert opinion, including Tribal traditional knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Iowa Tribe of Kansas and Nebraska; Kaw Nation, Oklahoma; Omaha Tribe of Nebraska; Ponca Tribe of Nebraska; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23552 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036818; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Milwaukee, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin-Milwaukee (UWM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Kane County, IL.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Jennifer R. Haas, University of Wisconsin-Milwaukee, P.O. Box 413, Milwaukee, WI 53201, telephone (414) 229–3078, email *haasjr@uwm.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the UWM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the UWM.

Description

In 1972, human remains representing, at minimum, 19 individuals were removed from the Wild Rose Mounds (Allen) Site in Kane County, IL, during excavations conducted by the College of Du Page. In 2009, the human remains (1972.4.1) and associated funerary objects from these excavations were transported to UWM. In 1984, Northwestern University conducted a Phase I survey of the Wild Rose Mounds site, during which they removed from the site surface pottery sherds, lithic debitage, and a fragmentary cranial bone belonging to of an indeterminate, large mammal. On an unknown date (possibly in 2009), these cultural materials were transferred to UWM. The Wild Rose Mounds Site dates to the Upper Mississippian (A.D. 1000 to 1600) and Middle Woodland (A.D. 0 to 400) periods. The three associated funerary objects are one lot consisting of faunal vertebrae (1972.4.2); one lot consisting of faunal remains and lithic material (1972.4.3); and one lot consisting of pottery sherds, lithic debitage, and faunal remains (1983.5.4).

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, archeological, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the UWM has determined that:

- The human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the UWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The UWM is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23551 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036828; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: California State University, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Los Angeles has amended a Notice of Inventory Completion published in the **Federal Register** on July 21, 2023. This notice amends the number of associated funerary objects in a collection removed from Mariposa County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Michele Bleuze, California State University, 5151 State University Drive, Los Angeles, CA 90032, telephone (323) 343–2440, email *mbleuze@calstatela.edu* and Amira Ainis, California State University, 5151 State University Drive, Los Angeles, CA 90032, telephone (323) 343–2449, email *aainis2@calstatela.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Los Angeles. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by California State University, Los Angeles.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (88 FR 47164–47165, July 21, 2023). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This notice amends the number of associated funerary objects as listed in the original notice. Upon the rehousing of ancestors at the request of the Tribes, additional associated funerary objects were discovered.

From the Hackney Site (CA–MRP–283), in Mariposa County, CA, the 45 associated funerary objects (no associated funerary objects were previously listed) include nine lots consisting of flaked stone tools, nine lots consisting of lithic chipping debris/debitage, nine lots consisting of ground stone artifacts, six lots consisting of stone ornaments, three lots consisting of worked clay objects, two lots consisting of glass trade beads, two lots consisting of soil samples, one lot consisting of bone tools, one lot consisting of shell beads, one lot consisting of charcoal, one lot consisting of organic (plant) materials, and one lot consisting of faunal and unidentified bone fragments.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, California State University, Los Angeles has determined that:

- The human remains represent the physical remains of two individuals of Native American ancestry.
- The 45 associated funerary objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Chicken Ranch Rancheria of Me-Wuk Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Tule River Indian Tribe of the Tule River Reservation, California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, California State University, Los Angeles must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. California State University, Los Angeles is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, § 10.13, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23542 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036822; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management (BLM Alaska) intends to repatriate certain a cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from the Nome Census Area, AK.

DATES: Repatriation of the cultural item in this notice may occur on or after November 24, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of BLM Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including

the results of consultation, can be found in the inventory or related records held by BLM Alaska.

Description

Most likely in the 1950s or 1960s, one cultural item was removed from the vicinity of Wales in the Nome Census Area, AK, and was placed in the collection of the Haffenreffer Museum of Anthropology at Brown University in Providence, RI. (The museum's sponsorship of multiple expeditions to Alaska in the mid-20th century might account for its custody of this cultural item.) The one unassociated funerary object is a polar bear cranium marked ''Polar bear from burial site near Wales.''

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, oral traditional, and museum records.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Native Village of Wales.

Requests for Repatriation

Written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, BLM Alaska must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of this cultural item is considered a single request and not competing requests. BLM Alaska is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23554 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036800; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Cumberland Gap National Historic Park, Middlesboro, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Cumberland Gap National Historic Park (CUGA) has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from Claiborne County, TN, and Lee County, VA.

DATES: Disposition of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Lisa Baldwin, Superintendent, Cumberland Gap National Historic Park, 91 Bartlett Park Road, Middlesboro, KY 40965, telephone (606) 248–2817, email *lisa_baldwin@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, CUGA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by CUGA.

Description

Human remains representing, at minimum, one individual were removed from an unknown location in Claiborne County, TN. In 1957, Mr. Maxwell Ramsey of Cumberland Gap, Claiborne County, TN, donated the human remains to CUGA. No associated funerary objects are present.

Human remains representing, at minimum, three individuals were removed from the Carl Harris property in Lee County, VA. In 1958, the human remains were donated to CUGA by Mr. Carl Harris of Gibson Station, VA. No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission or the United States Court of Claims, and treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, CUGA has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who

shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after November 24, 2023. If competing requests for disposition are received, CUGA must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. CUGA is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23544 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036826; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Franklin, Hampden, and Hampshire Counties, MA.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Franklin County, MA

Human remains representing, at minimum, one individual were removed from Franklin County, MA. Sometime before August 23, 1858, Roswell Field removed the human remains from a field in Deerfield, Franklin County, MA, while it was being ploughed. Field donated the human remains to the Boston Society for Medical Improvement (BSMI) through Charles Pickering Bowditch on August 23, 1858. In 1889, the Harvard Medical School faculty voted to accept the cabinet of the BSMI and incorporated the human remains into the collection of the Warren Anatomical Museum, Harvard University (WAM). In 1956, the WAM transferred the human remains to the PMAE as a permanent loan. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Franklin County, MA. At an unknown date, Dr. D.D. Slade removed the human remains from an unknown site near Greenfield, in Franklin County, MA. The human remains were found in the PMAE uncatalogued and were accessioned in 1964. No associated funerary objects are present.

Hampden County, MA

Human remains representing, at minimum, one individual were removed from Hampden County, MA. In 1922, P.B. Moore removed the human remains from Springfield, in Hampden County, MA; Ruth Otis Sawtell donated the human remains to the PMAE that same year. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Hampden County, MA. At an unknown date, Cecelia Guida removed the human remains from a burial ground in Westfield on the north bank of the Woronoco (Westfield) River, in Hampden County, MA. In 1951, the PMAE accessioned the human remains into the museum's collection. A preponderance of evidence suggests that this burial ground was within the Guida Farm site (19–HD–111), a Late Woodland to Contact Period site (A.D. 1000–1700). No associated funerary objects are present.

Human remains representing, at minimum, eight individuals were removed from Hampden County, MA. In 1882, B. Wilson Lord removed the human remains of, at minimum, five individuals from an ''Indian Burial Place'' (19–HD–153) on the bank of the Connecticut River in Longmeadow, Hampden County, MA. In May of 1883, Lord returned to the burial place with Frederic Ward Putnam as part of a Peabody Museum expedition directed by Putnam. Putnam removed the human remains of, at minimum, two individuals from the burial place at that time. Lord and Putnam presented the remains of all seven individuals to the Peabody Museum in May of 1883. In May of 1885, Lord returned again to the burial place, removed the human remains of, at minimum, one individual, and donated the human remains to the Peabody Museum that same month. Lord and Putnam collected lithics and ceramics from the area but did not describe them as coming from burials. The cultural items from the area tentatively date the site from the Late Archaic to Woodland Periods (B.C. 2000–A.D. 1500). No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Hampden County, MA. In the spring of 1885, B. Wilson Lord removed the human remains from the bank of the Connecticut River in Longmeadow, Hampden County, MA. Lord described the graves as having been uncovered by the river and noted the presence of ceramics in the vicinity of, but not in association with, the graves. Lord donated the human remains to the PMAE in May 1885. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Hampden County, MA. At an unknown date, Dr. D.D. Slade removed the human remains from Chicopee, in Hampden County, MA. No associated funerary objects are present.

Hampshire County, MA

Human remains representing, at minimum, two individuals were removed from Hampshire County, MA. At an unknown date, an unknown person from the Peabody Museum of Salem (now the Peabody Essex Museum) removed the human remains from Hadley Falls, in Hampshire County, MA. The Peabody Museum of Salem donated the human remains to the PMAE through Ernest S. Dodge in 1950. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Hampshire County, MA. At an unknown date, Dr. Whitwell removed

the human remains of one individual from South Hadley, in Hampshire County, MA, where excavations were being conducted for a large factory. Whitwell donated the human remains to the BSMI through Dr. Henry Jacob Bigelow on October 9, 1848. In 1889, the Harvard Medical School faculty voted to accept the cabinet of the BSMI and incorporated the human remains into the WAM's collection. In 1956, the WAM transferred the human remains to the PMAE as a permanent loan. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, kinship, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23555 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036824; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management (BLM Alaska) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from near the Native Village of Ambler in the Northwest Arctic Borough, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of BLM Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by BLM Alaska.

Description

Human remains representing, at minimum, 11 individuals were removed from the Northwest Arctic Borough near the Native Village of Ambler, AK. In the 1950s or 1960s, the human remains were removed from three site locations along the Kobuk River—''Ambler 1,'' ''Ivisahpat,'' and ''Onion Portage''—during a series of expeditions sponsored by the Haffenreffer Museum of Anthropology at Brown University in Providence, RI, and conducted under the direction of Douglas Anderson. Following their removal, the human remains, which are over 150 years old, were placed in the custody of the Haffenreffer Museum, where they are currently held. The seven associated funerary objects are three caribou bone fragments, two stone flakes, and two stone or bone items.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- The seven objects described in this notice that are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Native Village of Ambler.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, BLM Alaska must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. BLM Alaska is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

(Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.)

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23539 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036804; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Green Lake County, WI.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Boulevard, Oshkosh, WI 54901, telephone (920) 424–1365, email *friea@uwosh.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Wisconsin Oshkosh. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Wisconsin Oshkosh.

Description

In 1954, human remains representing, at minimum, two individuals were removed from the Progressive Rod and Gun Club Site (47–GL–0186) in Green Lake County, WI, by John (Jack) Steinbring during a surface survey. After removing the remains of these individuals, Steinbring kept them and did not report them to Wisconsin Historical Society. In the 1960s, when he began working at the University of Winnipeg in Canada, Steinbring took the individuals with him, and in the early 1990s, when he retired, he shipped the individuals back to Wisconsin. In 1994, Steinbring donated the remains of these individuals to the University of Wisconsin Oshkosh, and in 2022, employees at the University of Wisconsin Oshkosh identified them while inventorying the finds from the site. The 72 associated funerary objects are one lot consisting of likely domesticated dog cranial fragments; one medium-sized canid axis vertebra; one medium-sized canid left femur; one medium-sized canid left ulna; one medium-sized canid left humerus; one medium-sized canid fifth metacarpal; one medium-sized canid left temporal bone; one medium-sized canid left tibia; one medium-sized canid left zygomatic bone; one medium-sized canid lumbar vertebrae; one medium-sized canid metatarsal or metacarpal; one medium-sized canid right ulna; one medium-sized canid right humerus; one medium-sized canid second metacarpal; one medium-sized canid fourth metatarsal; one medium-sized canid right radius; one medium-sized canid right temporal bone; one medium-sized canid right tibia; three medium-sized canid thoracic vertebrae; one lot consisting of medium-sized mammal rib fragments; one lot consisting of unidentified mammal bone fragments; one unidentified mammal cranial fragment; one lot consisting of unidentified medium/large mammal long bone fragments; one biface preform; one lot consisting of unidentifiable unifacial tools; one lot consisting of burins; one lot consisting of scrapers; two lots consisting of unidentifiable bifaces; two lots consisting of Madison projectile points; one lot consisting of Kramer projectile points; one Honey Creek corner-notched projectile point; one Midland projectile point; one lot consisting of Raddatz projectile points; one lot consisting of unidentifiable cores; three lots consisting of lithic debitage; one fire-cracked rock; one lot consisting of bifaces; two unidentifiable bifaces; one lithic drill; one lot consisting of biface/uniface scrapers; one hammerstone; one handstone; one white-colored natural rock; one geologic mineral sample; one unidentifiable white glass fragment; two unidentifiable copper fragments; one lot consisting of soil matrix with potential crushed pottery and unidentifiable bone fragments; three lots consisting of diagnostic Madison ware grit-tempered ceramic rim sherds; five lots consisting of diagnostic grit-tempered ceramic body sherds; four diagnostic Madison ware grit-tempered ceramic body sherds; three undiagnostic grit-tempered ceramic body sherds; one diagnostic grit-tempered ceramic rim sherd; and one lot consisting of diagnostic Point Sauble grit-tempered ceramic rim sherds.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following type of information was used to reasonably trace the relationship: geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Wisconsin Oshkosh has determined that:

• The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

• The 72 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau; Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the University of Wisconsin Oshkosh must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Wisconsin Oshkosh is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23547 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036805; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology has amended a Notice of Inventory Completion published in the **Federal Register** on February 26, 2015. This notice amends the number of associated funerary objects in a collection removed from Middlesex County, MA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4493, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Robert S. Peabody Institute of Archaeology.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (80 FR 10501–10505, February 26, 2015). Repatriation of the items in the original Notice of Inventory Completion has not occurred. In late November 2022, the Robert S. Peabody Institute of Archaeology received additional archeological material amassed by the late Eugene Winter. The cremated remains of one or more individuals from the Poznick site (19–MD–47, 19–MD–158) were identified, along with associated funerary objects from the Poznick site and the Call site (19–MD–37).

From the Poznick Site (also known as Trull Farm and Meghann Lane, 19–MD–

47, 19–MD–158) in Middlesex County, MA, two individuals were removed (previously identified as one individual). The 40 funerary objects (previously identified as 0 associated funerary objects) are two ceramic sherds; five lots consisting of lithics; one lot consisting of bone fragments; four lots consisting of lithic debitage; three lots consisting of unmodified stone; one lot consisting of bone fragments, ceramic sherds and charcoal; one lot consisting of ground stone objects, possible hammerstones, lithic flakes/debitage, quartz flakes, ceramic sherds, bone fragments, and unmodified stones; 17 lots consisting of lithics, debitage, ceramic sherds, charcoal, soil, and ground stone tools; one lot consisting of quartz flakes, flake shatter, ground stone objects, and soil; one lot consisting of a quartz scraper, flake shatter, and unmodified stones; and four soil samples.

From the Call Site (19–MD–37) in Middlesex County, MA, 69 funerary objects are identified as associated with the remains of the two individuals identified in the previous notice (previously, 66 associated funerary objects were identified). These associated funerary objects are two chipped stone projectile points, two pottery sherds, six burned animal bone fragments, two small flat pebbles, one charcoal sample, 43 chipped stone flakes, 10 unmodified rocks, and three soil samples.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The human remains represent the physical remains of 16 individuals of Native American ancestry.
- The 186 objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Mashpee Wampanoag Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23548 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036821; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management (BLM Alaska) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from the Iyatayet site on the northwestern shore of Cape Denbigh and northwest of Shaktoolik, in the Nome Census Area, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of BLM Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by BLM Alaska.

Description

Human remains representing, at minimum, one individual were removed from the Iyatayet site on the northwestern shore of Cape Denbigh and northwest of Shaktoolik, AK. The human remains, which are estimated to be at least 800 years old, were removed by an unknown party, probably in the 1950s or 1960s, and were placed in the collection of the Haffenreffer Museum of Anthropology at Brown University in Providence, RI. (The museum's sponsorship of multiple expeditions to Alaska in the mid-20th century might account for its custody of these human remains.) The one associated funerary object is one lot consisting of unidentified faunal remains.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

• The human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• The one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Native Village of Shaktoolik.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, BLM Alaska must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. BLM Alaska is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

(Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.)

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23540 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036526; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Eastern California Museum, Independence, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Eastern California Museum (ECM) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Inyo County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Shawn E. Lum, Eastern California Museum, 155 Grant Street, P.O. Box 206, Independence, CA 93526, telephone (760) 878–0258, email *ecmuseum@inyocounty.us.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Eastern California Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Eastern California Museum.

Description

Human remains representing, at minimum, one individual were removed from Inyo County, CA. The human remains were found on November 24, 1962, at an Indian campsite near Goose Lake and northeast of Independence, in the Owens Valley. These human remains (Accession #A1942/NL1/NL2) were loaned to ECM in 1968. In 2022, with donor permission, the loan was converted to a gift, with the understanding that ECM would work to respectfully repatriate the human remains.

Additional statement from Sean Scruggs: Theft, collections, and destruction of ancestral lands are the reasons repatriation by tribal people is necessary by people like myself, Sean Scruggs, Tribal Historical Preservation Officer for the Fort Independence Indian Reservation. The act of repatriation is honorable itself, much like that of the United States military when fallen soldiers are returned home from foreign lands. Through repatriation, tribal people work to restore traditional homelands by returning family members home to give them the peace and honor they so richly deserve.

Tribal people have no ceremony for re-burials. Native Americans did not collect and desecrate burial sites, they were left intact for the natural world as our Creator intended. The act of repatriation puts me, and others, at spiritual, emotional, and physical risk by attempting to return these family members where they belong. Entrusted not only with their physical remains, but their spirit as well—tribal people get only one chance help a person complete their journey home.

On May 1, 2023, a NAGPRA osteologist confirmed at least two of three facts that I ''felt'' prior to the assessment of the man I am choosing to care for. I connected with the individual and felt that he was a man around my age (40–50) and that he experienced something traumatic. He and I both share trauma in our lives. As such, my intuition tells me that he was a warrior and possibly a Chief among our people. The expert confirmed that the person is a male about 45 years old who had fire effects consistent with a cremation that was likely interrupted. Later, I had visions through this man's eyes as he went through the cremation whereby, I could feel the heat of the fire and see the flames of the fire through his eyes. I can feel his emotional pain and sorrow with visions of his wife and young daughter standing in the light of the fire as his body burned. Additionally, I felt that the cremation had either been stopped and or covered for fear of being discovered by settlers, making this event extremely traumatic and likely around the 1850's.

In Payahuunadü or the Land of Flowing Water (the Owens Valley), which is the place of our Creation, cremations and burial methods changed dramatically as a result of extermination, forced removal, creation of reservations, and assimilation. This extreme generational trauma and cultural disruption still creates dramatic shifts in the ability of our people to pass from this life to the next. Native Americans were not recognized as citizens until June 2, 1924. To me, the only rights that our ancestors have are those few afforded by NAGPRA which still doesn't recognize their basic right to rest in peace on their ancestral homes. The extraordinary efforts of

Shawn Lum and the ECM staff demonstrate the very best of cooperation, care, and respect in helping my Tribe heal and step toward closure through repatriation using the NAGPRA process.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Eastern California Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, Eastern California Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Eastern California Museum is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23543 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036825; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Warren Anatomical Museum, Harvard University, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE) and Warren Anatomical Museum (WAM), Harvard University have completed an inventory of human remains and have determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Franklin County, MA.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE and WAM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE and WAM.

Description

Human remains representing, at minimum, one individual were removed from Franklin County, MA. Sometime before August 23, 1858, Roswell Field removed the human remains from a field in Deerfield, Franklin County, MA, while it was being ploughed. Field donated the human remains to the Boston Society for Medical Improvement through Charles Pickering Bowditch on August 23, 1858. In 1889, the Harvard Medical School faculty voted to accept the cabinet of the Boston Society for Medical Improvement and incorporated the human remains into the WAM's collection. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, kinship, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint

repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23538 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036803; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Winnebago, WI.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after November 24, 2023.

ADDRESSES: Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Boulevard, Oshkosh, WI 54901, telephone (920) 424–1365, email *friea@uwosh.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Wisconsin Oshkosh. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Wisconsin Oshkosh.

Description

In 1975, human remains representing, at minimum, six individuals were removed from the Nile Roeder Site (47–WN–0197) in Winnebago, Winnebago County, WI, after being inadvertently found during construction. The principal investigator, Dr. Alaric Faulkner, performed a salvage excavation under the auspices of the University of Wisconsin Oshkosh. The 104 associated funerary objects are one bone flesher; one deer scapula hoe; one antler pressure flaker; one antler tool; one antler awl; one large mammal tooth fragment; one bear canine; one canid canine; one mussel shell; one fish otolith; one equid incisor; one lot of turtle shell fragments; one bear tooth fragment; one lot consisting of bird bones; one lot consisting of fish bones; two naiad shells; two lots consisting of naiad shells; two unidentified mammal bones; one lot consisting of unidentified small mammal bones; one unidentified large/medium mammal bone; one cord paddled and punctuated, grit-tempered ceramic rim sherd; three lots consisting of cord paddled, grit-tempered ceramic body sherds; one cord impressed, grit-tempered ceramic body sherd; one lot consisting of cord paddled and dentated, grit-tempered ceramic body sherds; three lots consisting of cord impressed, grit-tempered ceramic rim sherds; one lot consisting of cord impressed, grit-tempered ceramic rim sherds; one decorated, grit-tempered ceramic body sherd; one lot consisting of decorated, grit-tempered ceramic body sherds; one lot consisting of dentate, grit-tempered ceramic body sherds; two diagnostic, grit-tempered ceramic rim sherds; one incised, grit-tempered ceramic rim sherd; five lots consisting of undecorated, grit-tempered ceramic body sherds; one lot consisting of undecorated, grit-tempered ceramic rim sherds; two undecorated, grit-tempered ceramic rim sherds; one decorated, shell-tempered ceramic body sherd; one lot consisting of decorated, shell-tempered ceramic body sherds; one lot consisting of diagnostic, shell-tempered ceramic rim sherds; one impressed, shell-tempered ceramic rim sherd; one lot consisting of impressed and dentated, shell-tempered ceramic rim sherds; one lot consisting of incised, shell-tempered ceramic body sherds; one undecorated, shell-tempered ceramic rim; one lot consisting of cord impressed, shell-tempered ceramic body sherds; one lot consisting of impressed and trailed, shell-tempered ceramic rim sherds; three lots consisting of impressed, shell-tempered ceramic rim sherds; one impressed, trailed, and dentated shell-tempered ceramic rim sherd; one lot consisting of trailed and dentated, shell-tempered ceramic body sherds; one lot consisting of trailed and punctuated, shell-tempered ceramic rim sherds; four lots consisting of trailed, shell-tempered ceramic body sherds; six lots consisting of undecorated, shell-tempered ceramic body sherds; one trailed and punctuated, shell-tempered ceramic rim sherd; one lot consisting of trailed, shell-tempered ceramic rim sherds; four lots consisting of undecorated, shell-tempered ceramic rim sherds; one cord paddled, shell-tempered ceramic rim sherd; two corner notched, expanding stem projectile points; three fire cracked rocks; one hammerstone; one anvil stone; one biface projectile point; one biface tool fragment; six lots consisting of lithic debitage; one lithic drill; one lot consisting of lithic drills; one groundstone anvil; two lithic preforms; one side-notched projectile point; one lithic hafted knife; one shell-tempered clay disc fragment; one lot consisting of cuprous metal; and one soil matrix sample.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following type of information was used to reasonably trace the relationship: geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Wisconsin Oshkosh has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- The 104 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band

of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the University of Wisconsin Oshkosh must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Wisconsin Oshkosh is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23546 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036820; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Calaveras County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

Description

Human remains representing, at minimum, 21 individuals were removed from Calaveras County, CA. In 1951, Phil Cummings Orr, archeologist and Curator of Paleontology and Anthropology at the Santa Barbara Museum of Natural History, removed these human remains during excavations he conducted at Moaning Cavern (CA–CAL–13) and Cave of Skulls (CA–CAL–29), near Vallecito, CA. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historic, and other information or expert

opinion, including Tribal traditional knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of at minimum 21 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23553 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036827; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Hampden County, MA.

DATES: Repatriation of the cultural item in this notice may occur on or after November 24, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the PMAE.

Description

The one cultural item was removed from Hampden County, MA. The cultural item was collected by Harry A. Wright from a cemetery at the Long Hill site in Springfield, Hampden County, MA, between 1891 and 1896. Wright donated the cultural item to the PMAE in 1907. Wright removed the cultural item from a grave containing the human remains of at least 13 individuals. Wright described the individuals as embedded in a layer of dry sand and surrounded by a layer of ''charcoal,'' which may have been a misinterpretation of decayed woven burial mats. The cultural item lay in the layer of ''charcoal'' and was not associated with any specific individual. Descriptions of the burial indicate that two metal spoons and European-made buckles were also interred with the individuals and a few Dutch ''fairy pipes,'' flint flakes, and a stone axe laid on and near the surface of the grave. None of these items are in the possession of the Peabody Museum. The one unassociated funerary object is a Colonoware cup.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, kinship, linguistic, and oral tradition.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are

considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23558 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036801; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Castillo de San Marcos National Monument, Saint Augustine, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Castillo de San Marcos National Monument (CASA) has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from St. Johns County, FL.

DATES: Disposition of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Gordie Wilson, Superintendent, Castillo de San Marcos National Monument, 8635 A1A South, Saint Augustine, FL 32080, telephone (904) 829–6506, email *Gordon_Wilson@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the superintendent, CASA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by CASA.

Description

Human remains representing, at minimum, five individuals were removed from St. John's County, FL. The human remains were donated to CASA in 1947 with very little accompanying documentation pertaining to archeological context. In 1974, Dr Kathleen Deagan dated most material in the collection to post-1672 (the date the fort was constructed). No associated funerary objects are present.

In 1979, human remains representing, at minimum, one individual were removed from St. John's County, FL, during an excavation of test pits and trenches by Dr. Kathleen Deagan. No associated funerary objects are present.

Aboriginal Land

The human remains in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission, and a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, CASA has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after November 24, 2023. If competing requests for disposition are received, CASA must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. CASA is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23545 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036807; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Bandy Heritage Center for Northwest Georgia, Dalton State College, Dalton, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Bandy Heritage Center for Northwest Georgia, Dalton State College has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Johnson County, TX.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Adam Ware, Bandy Heritage Center for Northwest Georgia, Dalton State College, 650 College Drive, Dalton, GA 30720, telephone (706) 712–8218, email *aware@daltonstate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Bandy Heritage Center for Northwest Georgia, Dalton State College. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Bandy Heritage

Center for Northwest Georgia, Dalton State College.

Description

Human remains representing, at minimum, one individual were removed from Johnson County, TX. In the autumn of 1860, J.J. Bostick removed a lock of hair from a male member of the Comanche Nation and enclosed it in a letter to family in Villanow, GA, dated December 25, 1860. Subsequently, the descendants of J.J. Bostick donated the lock of hair to Dalton State College for inclusion in the Bandy Heritage Center for Northwest Georgia's collections. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Bandy Heritage Center for Northwest Georgia, Dalton State College has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Comanche Nation, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the Bandy Heritage Center for Northwest Georgia, Dalton State College must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Bandy Heritage Center for Northwest Georgia, Dalton State College is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23550 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036823; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management (BLM Alaska) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from three areas near Kasilof, south of Soldotna, in the northwestern portion of the upper Kenai Peninsula Borough, AK.

DATES: Repatriation of the human remains in this notice may occur on or after November 24, 2023.

ADDRESSES: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of BLM Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by BLM Alaska.

Description

In 1930, human remains representing, at minimum, seven individuals were removed from three areas about five to ten miles apart and located south of Soldotna, in the northwestern portion of the upper Kenai Peninsula Borough, AK. Five partial sets of human remains [PM# 30–25–150; 30–25–151 & 30–25–153; 30–25–151.1; 30–25–152; 30–25–154] were removed from what was described as an ''old graveyard in front of Andrew Berg's house,'' located within what is now the Kenai National Wildlife Refuge, about 30 miles southeast of Soldotna on the north shore of Tustumena Lake, AK. Two additional, partial sets of human remains [PM# 30–25–157; 30–25–158] were collected at two different locations about two miles apart during road construction near Kasilof, AK, about 25 miles southeast of Soldotna and west of Tustumena Lake, AK. The remains of all seven individuals, which are estimated to be over 200 years old, were removed by Frederica de Laguna who, at that time, was associated with the University of Pennsylvania Museum of Archaeology and Anthropology in Philadelphia, PA. Following their removal, the human remains were placed in the custody of this museum, where they are currently held. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, BLM Alaska has determined that:

- The human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains

described in this notice and the Kenaitze Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after November 24, 2023. If competing requests for repatriation are received, the BLM Alaska must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. BLM Alaska is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: October 18, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–23541 Filed 10–24–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Fourth Review)]

Foundry Coke From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on April 3, 2023 (88 FR 19674) and determined on July 7, 2023 that it would conduct an expedited review (88 FR 58617, August 28, 2023).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on October 20, 2023. The views of the Commission are contained in USITC Publication 5468 (October 2023), entitled *Foundry Coke from China: Investigation No. 731–TA–891 (Fourth Review).*

By order of the Commission.

Issued: October 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23601 Filed 10–24–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Products Containing Tirzepatide and Products Purporting to Contain Tirzepatide, DN 3702;* 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 Eli Lilly and Company on October 19, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing tirzepatide and products purporting to contain tirzepatide. The complaint names as respondents: Arctic Peptides LLC of Ankeny, IA; Audrey Beauty Co. of Hong Kong; Biolabshop Limited of United Kingdom; Mew Mews Company Limited of Hong Kong; Strate Labs LLC of Spring, TX; Steroide Kaufen of Poland; Super Human Store of Spain; Supopeptide of Cedar Grove, NJ; Triggered Supplements LLC (d/b/a The Triggered Brand) of Clearwater, FL; Unewlife of Cedar Grove, NJ; and Xiamen Austronext Trading Co., Ltd. (d/b/a AustroPeptide) of China. The complainant requests that the Commission issue a general exclusion order or in the alternative, a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant,

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Randolph J. Stayin not participating.

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. 3702'') 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 *atEDIS3Help@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: October 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23584 Filed 10–24–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536 (Fifth Review)]

Circular Welded Pipe and Tube From Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey; Cancellation of Hearing for Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On June 7, 2023, the Commission established a schedule for the conduct of the full five-year reviews (88 FR 39475, June 16, 2023). On October 18, 2023, counsel for Bull Moose Tube Company, Maruichi American Corporation, Nucor Tubular Products Inc., and Zekelman Industries (collectively, ''Domestic Producers'') filed a request to appear at the hearing. In their request, counsel for the Domestic Producers requested that the Commission cancel the currently scheduled hearing in the event that no other interested party requested to appear. No other parties submitted a request to appear at the hearing. Counsel indicated a willingness to submit written responses to any Commission questions. Consequently, the public hearing in connection with these reviews, scheduled to begin at 9:30 a.m. on Thursday, October 26, 2023, is cancelled. Parties to these reviews should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on November 6, 2023.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23620 Filed 10–24–23; 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

Notice of Lodging of Proposed Consent Decree Modification Under the Clean Air Act

On October 19, 2023, the Department of Justice lodged a proposed Consent Decree Modification (''Modification'') with the United States District Court for the Eastern District of Michigan in the lawsuit entitled *United States and the Michigan Department of Environment, Great Lakes, and Energy* v. *Cleveland-Cliffs Steel Corp. (f/k/a AK Steel Corp.)* Case No. 15–cv–11804.

The Modification amends the Consent Decree entered by the Court on August 21, 2015, which resolved Plaintiffs' claims that Defendant violated the Clean Air Act at its steel manufacturing plant located in Dearborn, Michigan. The Consent Decree required Defendant to improve its maintenance and operation of the electrostatic precipitator (''ESP'') at the plant in order to reduce emissions of various pollutants. Plaintiffs have determined, however, that these efforts were insufficient and the Modification requires Defendant to replace the ESP entirely. It also requires routine testing of the new ESP, operation in accordance with various parameters, and improved monitoring. Finally, the Modification requires Defendant to pay an $80,000 penalty to Michigan for violation of state law and perform a State supplemental environmental project that consists of providing air purifiers to area residences near the plant.

The publication of this notice opens a period for public comment on the proposed Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Cleveland-Cliffs,* Case No. 15–cv–11804, D.J. Ref. No. 90–5–2–1–10702. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Modification may be examined and downloaded at this Justice Department website: *https://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $34.25 (25 cents per page reproduction cost) for the proposed Modification, payable to the United States Treasury.

Patricia Mckenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–23502 Filed 10–24–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Manlifts 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 November 24, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Wilson Vadukumcherry by telephone at 202–693–0110, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA is requiring this information to be collected by employers for determining the cumulative maintenance status of a manlift and/or taking the necessary preventive actions to ensure worker safety. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 18, 2023 (88 FR 31824).

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: Manlifts Standard.

OMB Control Number: 1218–0226.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 3,000.

Total Estimated Number of Responses: 36,000.

Total Estimated Annual Time Burden: 37,800 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Wilson Vadukumcherry,

Senior PRA Analyst.

[FR Doc. 2023–23500 Filed 10–24–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet November 15–16, 2023, in Santa Fe, New Mexico, near the Los Alamos National Laboratory covered facility. Submission of comments, requests to speak, materials for the record, and requests for special accommodations: You must submit comments, materials, requests to speak at the Advisory Board meeting, and requests for accommodations by November 8, 2023, identified by the Advisory Board name and the meeting date of November 15–16, 2023, by any of the following methods: *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, for example ''Request to Speak: Advisory Board on Toxic Substances and Worker Health''); or by *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (November 15–16, 2023). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

ADDRESSES: The Advisory Board will meet at the El Dorado Hotel & Spa, 309 W San Francisco St., Santa Fe, NM 87501. Telephone: 505–988–4455.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email *Mcginnis.Laura@DOL.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet: Tuesday, November 14, 2023, for a fact-finding site visit to the Los Alamos National Laboratory, accompanied by the Designated Federal Officer; Wednesday, November 15, 2023, from 9 a.m. to 5 p.m. Mountain time; and Thursday, November 17, 2023, from 8:30 a.m. to 11 a.m. Mountain time in Santa Fe, New Mexico. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Wednesday, November 15, from 4:15 p.m. to 5 p.m. Mountain time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to either be at the meeting location or call in to the public comment session at the start time listed.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) the Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Review responses to Board questions;
- Working group presentations;
- Discussion of reviewed claims and planning for additional case review;
- Review of Board tasks, structure and work agenda;
- Consideration of any new issues; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website.

Submission of comments: You may submit comments using one of the methods listed in the **SUMMARY** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (November 15–16, 2023). OWCP will post your comments on the Advisory Board website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by November 8, 2023, using one of the methods listed in the **SUMMARY** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant

requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

For further information regarding this meeting, you may contact Ryan Jansen, Designated Federal Officer, at *jansen.ryan@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 20th day of October, 2023.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–23605 Filed 10–24–23; 8:45 am]

BILLING CODE 4510–CR–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket Nos. 19–CRB–0010–CD (2018), 20–CRB–0010–CD (2019), 21–CRB–0008–CD (2020)]

Distribution of 2018 Cable Royalty Funds, Distribution of 2019 Cable Royalty Funds, Distribution of 2020 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Multigroup Claimants for partial distribution of 2018, 2019, and 2020 cable royalty funds.

DATES: Comments are due on or before November 24, 2023.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: All submissions must include a reference to the CRB and docket numbers 19–CRB–0010–CD (2018), 20–CRB–0010–CD (2019), and 21–CRB–0008–CD (2020). All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0010–CD (2018), 20–CRB–0010–CD (2019), or 21–CRB–0008–CD (2020).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated agreement among all claiming parties. 17 U.S.C. 111(d)(4)(A), 803(b)(3)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 803(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On April 3, 2023, Worldwide Subsidy Group LLC dba Multigroup Claimants (MGC) filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution amounting to $921,778 of the 2018 cable royalty funds on deposit, a partial distribution amounting to $963,466 of the 2019 cable royalty funds on deposit, and a partial distribution amounting to $928,162 of the 2020 cable royalty funds on deposit.[1] That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants [2] on whether any reasonable objection exists that would preclude the distribution of the requested amounts of the 2018, 2019, and 2020 cable royalty funds to the requesting claimant representatives. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov* and searching for docket number 19–CRB–0010–CD (2018), 20–CRB–0010–CD (2019), or 21–CRB–0008–CD (2020).

Dated: October 19, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–23524 Filed 10–24–23; 8:45 am]

BILLING CODE 1410–72–P

[1] These amounts are based on a formula developed by MGC. Multigroup Claimants' Motion for Partial Distribution of 2018, 2019 and 2020 Cable Royalties at 3–5 (*see, e.g.,* eCRB no. 27958).

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16–CRB–0009–CD (2014–17)]

Distribution of Cable Royalty Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Music Claimants for further partial distribution of Music Category Share funds from the 2016 and 2017 cable royalty funds.

DATES: Comments are due on or before November 24, 2023.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov.*

Instructions: All submissions must include a reference to the CRB and docket number 16–CRB–0009–CD (2014–17). All submissions will be posted without change to eCRB at

[2] The Settling Devotional Claimants filed an opposition to the motion to which MGC filed a reply. The Judges deem that both constitute timely filed comments that they will consider, together with any other comments they receive during the comment period, in determining whether any reasonable objection exists that would preclude the requested distribution to MGC.

https://app.crb.gov including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 16–CRB–0009–CD (2014–17).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, by at telephone (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated agreement among all claiming parties. 17 U.S.C. 111(d)(4)(A), 801(b)(3)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On April 11, 2023, Broadcast Music, Inc. (''BMI''), the American Society of Composers, Authors and Publishers (''ASCAP''), and SESAC Performing Rights, LLC (''SESAC'') (hereafter collectively the ''Moving Music Claimants'') filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a further [1] partial distribution of all but 1.5% of the remaining amount of the share allocated to the Music Claimants category of the 2016 and 2017 cable royalty funds. That statutory section requires that, before ruling on the motion, the Judges must publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the further partial distribution of the Music Category Share funds requested to the requesting claimant representatives. Parties objecting to the proposed further partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the further partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov* and searching for docket number 16–CRB–0009–CD (2014–17).

Dated: October 19, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–23518 Filed 10–24–23; 8:45 am]

BILLING CODE 1410–72–P

[1] On July 30, 2016, the Judges issued an Order Granting Motion for Partial Distribution granting the Moving Music Claimants a partial distribution of the 2016 funds; and on May 22, 2019, the Judges issued an Order Granting Motion for Partial Distribution granting them a partial distribution of the 2017 funds. Motion at 2 & n.4.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket Nos. 22–CRB–0005–CD (2021), 23–CRB–0008–CD (2022)]

Distribution of 2021 Cable Royalty Funds, Distribution of 2022 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Multigroup Claimants for partial distribution of 2021 and 2022 cable royalty funds.

DATES: Comments are due on or before November 24, 2023.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: All submissions must include a reference to the CRB and docket numbers 22–CRB–0005–CD (2021) and 23–CRB–0008–CD (2022). All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 22–CRB–0005–CD (2021) or 23–CRB–0008–CD (2022).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated agreement among all claiming parties. 17 U.S.C. 111(d)(4)(A), 801(b)(3)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On October 11, 2023, Worldwide Subsidy Group LLC dba Multigroup Claimants (MGC) filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution amounting to $901,128 of the 2021 cable royalty funds on deposit and $886,744 of the 2022 cable royalty funds on deposit. That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of the requested amounts of the 2021 and

2022 cable royalty funds to MGC. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov* and searching for docket number 22–CRB–0005–CD (2021) or 23–CRB–0008–CD (2022).

Dated: October 19, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–23523 Filed 10–24–23; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–23–0012; NARA–2024–001]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by December 11, 2023.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-2-0012/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Edward Germino, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–3758. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records'

administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Federal Communications Commission, Office of Economics and Analytics, Cable Price Survey Records (DAA–0173–2021–0031).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2023–23572 Filed 10–24–23; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0257]

Information Collection: Nondiscrimination in Federally Assisted Programs or Activities Receiving Assistance From the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Nondiscrimination in Federally Assisted Programs or Activities Receiving Assistance from the Commission.''

DATES: Submit comments by December 26, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0257. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0257 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0257. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0257 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of NRC Forms 781 and 782 and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML23137A372 and ML23137A371. The supporting statement is available in ADAMS under Accession No. ML23137A378.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2019–0257 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information,

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 4, Nondiscrimination in Federally Assisted Programs or Activities Receiving Assistance from the Commission.

2. *OMB approval number:* 3150–0053.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Forms 781 and 782.

5. *How often the collection is required or requested:* NRC Form 781, ''SBCR Compliance Review Part A,'' is submitted upon initiation or modification of a program, during the pre-award and post-award stage, periodic monitoring, and, if a complaint is being processed. NRC Form 782, ''Complaint Form,'' is submitted on occasion, if any person believes himself

or any specific class of individuals, have been subjected to discrimination prohibited by part 4 of title 10 of the *Code of Federal Regulations,* (10 CFR), subpart A, ''Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974,'' on behalf of the primary funding recipient or any other recipient that received NRC Federal financial assistance through the primary funding recipient. Self-evaluations are performed throughout the duration of obligation based on 10 CFR 4.231, ''Responsibility of applicants and recipients.''

6. *Who will be required or asked to respond:* Recipients of Federal financial assistance provided by the NRC (including educational institutions, other nonprofit organizations receiving Federal assistance, and Agreement States).

7. *The estimated number of annual responses:* 502.

8. *The estimated number of annual respondents:* 200.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 802 (152 hours for reporting (4 hours per respondent) and 650 hours for recordkeeping (3.25 hours per recordkeeper).

10. *Abstract:* All recipients of Federal financial assistance from the NRC are subject to the provisions of 10 CFR part 4, ''Nondiscrimination in Federally Assisted Programs or Activities Receiving Assistance from the Commission.'' Respondents must submit assurances of compliance with 10 CFR part 4 and complete NRC Form 781, to demonstrate compliance with civil rights statutes and regulations, Executive Orders, White House education initiatives, and related provisions of the Energy Policy Act of 2005 for nondiscrimination with respect to race, color, national origin, sex, disability, or age. Respondents must also notify participants, beneficiaries, applicants, and employees of nondiscrimination practices and keep records of Federal financial assistance and of their own self-evaluations of policies and practices. In the event that discrimination is alleged in NRC-conducted and Federal financially assisted programs and activities, it may be reported using NRC Form 782.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: October 19, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–23498 Filed 10–24–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–87]

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:* October 27, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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).:* CP2022–87; *Filing Title:* USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 218, Filed Under Seal; *Filing Acceptance Date:* October 19, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 27, 2023.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Attorney-Advisor.

[FR Doc. 2023–23606 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 79 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–19, CP2024–19.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23508 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, USPS Ground Advantage, Parcel Select & Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 16, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail, USPS Ground Advantage, Parcel Select & Parcel Return Service Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–15, CP2024–15.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23512 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 77 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–17, CP2024–17.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23505 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 80 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–20, CP2024–20.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23511 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 76 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–16, CP2024–16.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23504 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 16, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–14, CP2024–14.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23507 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 78 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2024–18, CP2024–18.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–23510 Filed 10–24–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–564, OMB Control No. 3235–0628]

Submission for OMB Review; Comment Request; Extension: Rule 17g–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization (''NRSRO'') to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. There are 10 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the recordkeeping policies and procedures required by Rule 17g–2. Based on staff experience, NRSROs are estimated to spend a total industry-wide burden of 2,600 annual hours to make and retain the appropriate records.[2]

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by November 24, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F St. NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 20, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23557 Filed 10–24–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98772; File No. SR–MIAX–2023–19]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Exchange Rule 307, Position Limits

October 19, 2023.

On April 21, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 307, Position Limits, to establish a process for adjusting option position limits following a stock split or reverse stock split in the underlying security. The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78q.

[2] 10 currently registered NRSROs × 260 hours = 2,600 hours.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

May 8, 2023.[3] On June 14, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received one comment regarding the proposal.[6]

On August 2, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change. On September 26, 2023, the Commission designated a longer period within which to determine to approve or disapprove the proposed rule change.[8] On October 12, 2023, the Exchange withdrew the proposed rule change (SR–MIAX–2023–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23497 Filed 10–24–23; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Approval for Information Collections: Joint Notice of Intent To Arbitrate and Notice of Availability for Arbitrator Roster

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the information collections of the Joint Notice of Intent to Arbitrate and Notice of Availability for Arbitrator Roster, as described separately below.

DATES: Comments on these information collections should be submitted by December 26, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Arbitration Procedures under 49 CFR 1108.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245–0284 or at *RCPA@stb.gov.* If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Information Collections

OMB Control Number: 2140–0038.

Information Collection 1

Title: Joint Notice of Intent to Arbitrate.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Parties seeking to submit to arbitration certain matters before the Board.

Number of Respondents: One.

Estimated Time per Response: One hour.

Frequency: On occasion.

Total Burden Hours (annually including all respondents): One hour.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 CFR 1108.5, arbitration commences with a written complaint that contains a statement that the relevant parties are participants in the Board's arbitration program, or that the complainant is willing to arbitrate the dispute pursuant to the Board's arbitration procedures. The respondent's answer to the written complaint must then indicate the respondent's participation in the Board's arbitration program or its willingness to arbitrate the dispute at hand pursuant to the Board's arbitration procedures.

As an alternative to filing a written complaint, parties may submit a joint notice to the Board, indicating the consent of both parties to submit an issue in dispute to the Board's arbitration program. In the joint notice, parties state the issue(s) that they are willing to submit to arbitration. The notice must contain a statement that would indicate that all relevant parties are participants in the Board's arbitration program pursuant to 1108.3(a), or that the relevant parties are willing to arbitrate voluntarily a matter pursuant to the Board's arbitration procedures, and the relief requested. The notice must also indicate whether parties have agreed to a three-member arbitration panel or a single arbitrator and must indicate whether the parties have mutually agreed to a lower amount of potential liability in lieu of the monetary award cap that would otherwise be applicable. The joint notice encourages greater use of arbitration to resolve disputes at the Board.

Information Collection 2

Title: Notice of Availability for Arbitrator Roster.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Potential arbitrators.

Number of Respondents: 23.

Estimated Time per Response: One hour.

Frequency: Annually.

Total Burden Hours (annually including all respondents): 23 hours.

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under 49 CFR 1108.6(b), an arbitration roster is compiled by the Chairman, and potential interested, qualified persons who wish to be placed on the Board's arbitration roster must submit notice of their availability to be added to the roster. The Chairman may augment the roster at any time to include eligible arbitrators and remove from the roster any arbitrators who are no longer available or eligible. Potential arbitrators must also update their availability and information annually, if they wish to remain available for the arbitration

[3] *See* Securities Exchange Act Release No. 97421 (May 2, 2023), 88 FR 29725 (May 8, 2023).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97727 (June 14, 2023), 88 FR 40366 (June 21, 2023). The Commission designated August 6, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] *See* letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission, dated July 5, 2023.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 34–98541 (Sept. 26, 2023), 88 FR 67834 (Oct. 2, 2023). The Commission designated January 3, 2024, as the date by which the Commission would approve or disapprove the proposed rule change.

[9] 17 CFR 200.30–3(a)(12).

roster. The arbitration rosters are available to the public on the Board's website at *https://www.stb.gov/resources/litigation-alternatives/arbitration/#arbitration-procedures.*

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 20, 2023.

Eden Besera,

Clearance Clerk.

[FR Doc. 2023–23600 Filed 10–24–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval for Information Collection: Rail Service Data

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the information collection of Rail Service Data, as described below.

DATES: Comments on this information collection should be submitted by December 26, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Rail Service Data.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), at (202) 245–0284 and at *Michael.Higgins@stb.gov.* If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Rail Service Data Collection.

OMB Control Number: 2140–0033.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads (on behalf of themselves and the Chicago Transportation Coordination Office (''CTCO'')).

Number of Respondents: Seven.

Estimated Time per Response: The collection seeks three related responses, as indicated in the table below.

TABLE—ESTIMATED TIME PER RESPONSE

Type of responses	Estimated time per response (hours)
Weekly	1.5
Semi-annual	7
On occasion	7

Frequency: The frequencies of the collection are set forth in the table below.

TABLE—FREQUENCY OF RESPONSES

Type of responses	Frequency of responses (years)
Weekly	52
Semi-annual	2
On occasion	1

Total Burden Hours (annually including all respondents): The total annual burden hours are estimated to be no more than 651 hours per year, as indicated in the table below.

TABLE—TOTAL BURDEN HOURS

[Per year]

Type of responses	Number of respondents	Estimated time per response (hours)	Frequency of responses (years)	Total yearly burden (hours)
Weekly	7	1.5	52	546
Semi-annual	7	7	2	98
On occasion	1	7	1	7
Total				651

Total ''Non-hour Burden'' Cost: There are no other costs identified because filings are submitted electronically to the Board.

Needs and Uses: Under 49 CFR part 1250, the Board requires the nation's seven Class I (large) railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain railroad service performance metrics on a weekly basis and certain other information on a semi-annual and occasional basis. This collection of rail service data aids the Board in identifying rail service issues, allowing the Board to better understand current service issues and to identify and address potential future regional and national service disruptions more quickly. The transparency resulting from this collection also benefits rail shippers and other stakeholders by helping them to better plan operations and make informed decisions based on publicly available, near real-time data

and their own analysis of performance trends over time.

The Board makes this submission because, under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 20, 2023.

Eden Besera,

Clearance Clerk.

[FR Doc. 2023–23599 Filed 10–24–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Evansville Regional Airport, Evansville, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change approximately 0.135 acres of airport land from aeronautical use to non-aeronautical use and to authorize an easement be placed on airport property located at Evansville Regional Airport, Evansville, Indiana. The aforementioned land is not needed for aeronautical use. The land is located at the intersection of Oak Hill Road and William L. Brooks Drive and is currently vacant. The proposed use of the land is to accommodate right-of-way needed for Oak Hill Road improvements.

DATES: Comments must be received on or before November 24, 2023.

ADDRESSES: All requisite and supporting documentation will be made available for review by appointment at the FAA Chicago Airports District Office, Joe Wejman, Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7526/Fax: (847) 294–7046.

Written comments on the Sponsor's request may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions for sending your comments electronically.
- *Mail:* Joe Wejman, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois, 60018.
- *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.
- *Fax:* (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Joe Wejman, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7526/FAX: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land is part of airport Parcel 80 that was acquired by the Airport Sponsor on October 31, 1961. The parcel was funded with Federal Aid to Airports Program (FAAP) grant C108. This is currently vacant land that is not needed for aeronautical purposes. The Airport Sponsor is proposing to change the land from aeronautical use to non-aeronautical use and grant a right-of-way easement to Vanderburgh County to accommodate Oak Hill Road improvements. The Airport Sponsor will receive fair market value for the proposed easement.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Evansville Regional Airport, Evansville, Indiana from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

A part of Section 34, Township 5 South, Range 10 West, Vanderburgh County, Indiana, and being that part of the grantor's land lying within the right of way lines depicted on the attached Right of Way Parcel Plat, marked EXHIBIT ''B'', described as follows: Commencing at the northeast corner of said section, designated as point ''3084'' on said plat; thence North 88 degrees 33 minutes 40 seconds West 30.00 feet along the north line of said section to the prolonged west boundary of Oak Hill Road; thence South 1 degree 28 minutes 20 seconds West 24.62 feet along said prolonged west boundary to the point where the west boundary of said Oak Hill Road meets the south boundary of William L. Brooks Drive and the point of beginning of this description: thence continuing South 1 degree 28 minutes 20 seconds West 111.38 feet along the boundary of said Oak Hill Road to the south line of the grantor's land; thence North 88 degrees 33 minutes 40 seconds West 42.73 feet along said south line; thence North 8 degree 48 minutes 32 seconds West 113.57 feel to the south boundary of said William L. Brooks Drive, designated as point ''589'' on said plat; thence South 88 degrees 12 minutes 45 seconds East 63.00 feet along the boundary of said William L. Brooks Drive to the point of beginning and containing 0.135 acres, more or less.

Issued in Des Plaines, Illinois, on October 20, 2023.

Debra L. Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2023–23604 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0076]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 13, 2023, Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 220, Railroad Communications. The relevant Docket Number is FRA–2018–0076.

Specifically, CN requests continued relief from § 220.305, *Use of personal electronic devices,* and § 220.307, *Use of railroad-supplied electronic devices,* to permit its employees to use certain fitness trackers while conducting their daily duties. The request pertains to the Virgin Pulse Max Pedometer and/or

Virgin Pulse GoZone Pedometer. CN also requests to include in the relief ''similar devices from other manufacturers that are solely monitoring devices without the capability to make or receive phone calls, send or receive texts, and are not capable of hosting independent games or programs.'' CN states the risk of distraction is substantially minimized based on the devices' limited functionality and further explains that the devices are part of ''an important well-being program'' to ''support improved health outcomes'' for employees.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by December 26, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–23564 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 95]

Railroad Safety Advisory Committee; Charter Renewal

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of charter renewal of the Railroad Safety Advisory Committee (RSAC).

SUMMARY: FRA announces the charter renewal of the RSAC, a Federal Advisory Committee established by the U.S. Secretary of Transportation in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the FRA Administrator on matters relating to railroad safety. This charter renewal will be effective for two years from the date it is filed with Congress.

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, 202–365–3724.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 2). RSAC comprises 51 representatives from 26 organizations, representing various rail industry perspectives. The diversity of the committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. Please see the RSAC website for additional information at *https://rsac.fra.dot.gov/.*

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–23574 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–28306]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 1, 2023, the American Public Transportation Association (APTA), on behalf of its member railroads, petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238, Passenger Equipment Safety Standards. The relevant FRA Docket Number is FRA–2007–28306.

Specifically, APTA requests continued relief from § 238.309, *Periodic brake equipment maintenance,* as applied to locomotives equipped with 26–L type brake systems and air dryers, and cab cars equipped with 26–L and Electronic Brake Valve- (EBV) type brake valves operated with locomotives with functional air dryers. The current relief extends the periodic testing interval from 3 years (1,104 days) to 4 years (1,472 days) for 26–L, and to periods stated in § 229.29 for EBV-type brake valves. In support of its request, APTA states that it is ''unaware of any performance problems with the subject brake equipment operating under the current waiver.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by December 26, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments,

without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2023–23559 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0091; Notice 2]

Mercedes-Benz USA, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Mercedes-Benz AG (''MBAG'') and Mercedes-Benz USA, LLC, (''MBUSA'') (collectively, ''Mercedes-Benz'') have determined that certain model year (MY) 2019–2021 Mercedes-Benz motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems.* Mercedes-Benz filed a noncompliance report dated August 14, 2020. Mercedes-Benz subsequently petitioned NHTSA on September 4, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces denial of Mercedes-Benz's petition.

FOR FURTHER INFORMATION CONTACT: Vince Williams, General Engineer, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2319, facsimile (202) 366–3018.

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz has determined that certain MY 2019–2021 Mercedes-Benz A-Class, CLA-Class, GLA-Class, and GLB-Class motor vehicles do not fully comply with the requirements of paragraph S5.1.2 of FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). Mercedes-Benz filed a noncompliance report dated August 14, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mercedes-Benz subsequently petitioned NHTSA on September 4, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Mercedes-Benz's petition was published with a 30-day public comment period, on December 11, 2020, in the **Federal Register** (85 FR 80225). One comment was received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/,* and then follow the online search instructions to locate docket number ''NHTSA–2020–0091.''

II. Vehicles Involved: Approximately 56,223 of the following MY 2019–2021 Mercedes-Benz A-Class, CLA-Class, GLA-Class, and GLB-Class motor vehicles, manufactured between October 8, 2018, and July 27, 2020, are potentially involved:

- 2020 Mercedes-Benz A35 AMG
- 2020 Mercedes-Benz CLA45 AMG
- 2021 Mercedes-Benz GLA250
- 2019–2020 Mercedes-Benz A220
- 2020–2021 Mercedes-Benz CLA250
- 2020 Mercedes-Benz CLA35 AMG
- 2021 Mercedes-Benz GLA45 AMG
- 2021 Mercedes-Benz GLA35 AMG
- 2020 Mercedes-Benz GLB250

III. Noncompliance: Mercedes-Benz explains that the noncompliance is that the subject vehicles are not equipped with an acoustic or optical device that warns the driver when the rear brake lining requires replacement, and therefore, does not meet the requirements specified in paragraph S5.1.2 of FMVSS No. 135. Specifically, the subject vehicles are equipped with a service brake system that does not indicate the wear condition of the rear service brakes.

IV. Rule Requirements: Paragraph S5.1.2 of FMVSS No. 135 includes the requirements relevant to this petition. The wear condition of all service brakes shall be indicated by either acoustic or optical devices warning the driver at his or her driving position when lining replacement is necessary or by way of visually checking the degree of brake lining wear, from the outside or underside of the vehicle, utilizing only the tools or equipment normally supplied with the vehicle. The removal of wheels is permitted for this purpose.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section are the views and arguments provided by Mercedes-Benz. They do not reflect the views of NHTSA. Mercedes-Benz describes the subject noncompliance and states its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mercedes-Benz submits that although the subject vehicles are equipped with a service brake system that does not indicate the wear condition of the rear service brakes, the front service brakes use an electrical brake pad sensor to monitor the wear status of the front brake pads. Mercedes-Benz explains that once the front service brakes reach a thickness of ⅛ inch or 3 mm, ''a warning lamp will automatically display in the instrument cluster and will remain permanently illuminated until the vehicle is serviced.'' Mercedes-Benz states a message will also appear in the instrument cluster stating: ''Check brake pads. See Owner's Manual.'' Mercedes-Benz states that while the driver is able to manually extinguish the indicator and message, both the indicator and message will display at each ignition cycle until the brake linings are replaced. Mercedes-Benz states that the front brake lining will not become critical until 6,000 miles after the warning indicator and message first appears.

Mercedes-Benz further explains that ''the brake force distribution is in a range of 71.9%–75.5% (front)/28.1%–24.5% (rear)'' causing the lining on the front service brakes to wear faster than the lining on the rear service brakes. Therefore, Mercedes-Benz explains, when the driver goes to get the front brakes serviced, ''the standard work instructions direct the technician to also inspect and evaluate the status of all other sets of brake pads'' and the driver will be advised if the rear brake linings are ''not sufficient to make it to the next service interval.'' Accordingly, Mercedes-Benz argues the ''vehicle's rear brakes will be inspected by a trained professional technician a number of times before they ever need to be replaced.''

Additionally, Mercedes-Benz states that in the event that the subject vehicle is ''taken to an independent repair facility that did not follow Mercedes-Benz's comprehensive brake pad inspection protocols, there is not an increased safety risk.'' According to Mercedes-Benz, if the rear brake lining becomes fully worn, the subject vehicle ''would continue to meet the braking distance requirements of FMVSS [No.] 135'' due to the brake force distribution described above and the performance of the rear brakes. Furthermore, Mercedes-

Benz argues that if a driver of the subject vehicle had completely worn rear braking linings, ''the driver will hear the unmistakable sound of metal being pressed against the brake discs.''

Mercedes-Benz states that it is not aware of any reports or complaints about the issue from the field and it has corrected the condition in production.

Mercedes-Benz concluded by reiterating the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Mercedes-Benz's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Public Comment: NHTSA received one comment from the public. This comment was submitted by Ricquitta Johnson. The comment only states the docket number for the notice of receipt and does not provide any feedback or address the purpose of this petition.

VII. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1]

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[3]

NHTSA has evaluated the merits of Mercedes-Benz's petition and determined that Mercedes-Benz has not met its burden of persuasion that the subject noncompliance is inconsequential to motor vehicle safety.

Paragraph S5.1.2 of FMVSS No. 135 requires all vehicles to have an acoustic or optical warning device on all wheels, or a means of visually checking the degree of brake lining wear from the outside or underside of the vehicle by utilizing only the tools or equipment normally supplied with the vehicle. The removal of wheels is also permitted for this purpose. According to the petition's description of the system at issue, the front wheels on the subject vehicles meet the brake requirement in that they are equipped with electrical brake pad sensors that monitor the front brake pads and provide an optical warning to the driver once the brake pads reach a certain OEM determined thickness. However, the rear wheels are neither equipped with an optical or audible sensor to alert the driver once the rear brake pads are below the OEM recommended thickness nor are the vehicles supplied with a visual means of checking the degree of brake lining wear from the outside or underside of the vehicle. Specifically, the vehicle is lacking an inspection gauge with the necessary instructions to check the wear of the brake pads on the rear axle from the outside or underside of the vehicle.

In its petition, Mercedes-Benz states that the front brakes provide 72–75% of the braking force. Due to this unequal brake force distribution, the front brake pads will wear out faster than the rear brake pads. Mercedes-Benz contends that anytime the front brake pads are serviced at a Mercedes-Benz workshop or an independent work facility, the standard work instructions are to inspect both the front and rear brake pads to determine if the rear brake pads also need to be replaced. Mercedes-Benz also states that if the rear brake pads are not serviced at the time when the front pads are inspected and the rear brake pads wear out, even completely, before the next scheduled brake inspection, the front brakes and brake distribution will always be adequate to meet the stopping requirements of FMVSS No. 135. Mercedes-Benz claims that in the case where the rear brake pads are completely worn out, the driver will hear an unmistakable sound of metal being pressed against the brake discs which will alert them that the pads are worn out.

NHTSA finds that the repair scenario described by Mercedes-Benz does not account for all drivers of Mercedes-Benz vehicles. Some drivers may not follow brake service or maintenance schedules. Without receiving a warning that the brake pads need to be replaced, these drivers could continue to operate the vehicle for an extended period once the rear brake pads reach the OEM determined minimum thickness. In addition, the ''do it yourself (DIY)'' customers who may not have the technical expertise of a Mercedes-Benz technician, could potentially miss checking the condition of the rear brake pads during brake servicing and, without a warning, continue to operate the vehicle for an extended period once the rear brake pads reach the OEM determined minimum thickness.

Although Mercedes-Benz claims that the brake force distribution described above and the performance of the front brakes are enough to meet the stopping requirements of the regulation in the event the rear brake lining is completely worn, Mercedes-Benz provided no data to support this assertion. Additionally, with regard to Mercedes-Benz' claim that the driver would hear the unmistakable sound of metal on the rear disc once the rear pads completely wear out, no data was provided to support this contention and further, the purpose of the standard is to notify the driver prior to reaching such an extreme brake pad wear state that most of the brake power on that wheel is lost. Mercedes-Benz has not met its burden of persuasion and for the reasons described herein NHTSA does not find that the subject noncompliance is inconsequential to motor vehicle safety.

VIII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that Mercedes-Benz has not met its burden of persuasion that the subject FMVSS No. 135 noncompliance is inconsequential to motor vehicle safety. Accordingly, Mercedes-Benz's petition is hereby denied, and Mercedes-Benz is consequently obligated to provide notification and a free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Cem Hatipoglu,

Acting Associate Administrator for Enforcement.

[FR Doc. 2023–23527 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0037; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: BMW of North America, LLC, a subsidiary of BMW AG, Munich, Germany, (collectively ''BMW''), has determined that certain Model Year (MY) 2018–2021 BMW K 1600 motorcycles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays.* BMW filed an original noncompliance report dated March 18, 2021, and, subsequently, BMW petitioned NHTSA on April 9, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of BMW's petition.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7487.

SUPPLEMENTARY INFORMATION:

I. Overview

BMW has determined that certain MY 2018–2021 BMW K 1600 motorcycles do not fully comply with the requirements of paragraph S5.2.5 of FMVSS No. 123, *Motorcycle Controls and Displays* (49 CFR 571.123). BMW filed a noncompliance report dated March 18, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BMW subsequently petitioned NHTSA on April 9, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of BMW's petition was published with a 30-day public comment period, on June 17, 2022, in the **Federal Register** (87 FR 36579). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2021–0037.''

II. Motorcycles Involved

Approximately 4,966 MY 2018–2021 BMW K 1600 GTL, B, and Grand America motorcycles manufactured between April 13, 2017, and February 23, 2021, are potentially involved.

III. Noncompliance

BMW explains that the subject motorcycles are equipped with passenger footrests that fold upward and slightly forward, but not rearward, when not in use, and therefore do not fully comply with the requirements specified in paragraph S5.2.5 of FMVSS No. 123.

IV. Rule Requirements

Paragraph S5.2.5 of FMVSS No. 123 includes the requirements relevant to this petition. Footrests shall be provided for each designated seating position. Each footrest for a passenger other than an operator shall fold rearward and upward when not in use.

V. Summary of BMW's Petition

The following views and arguments presented in this section, ''V. Summary of BMW's Petition,'' are the views and arguments provided by BMW and do not reflect the views of the Agency. BMW describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

BMW says that that while ''there are slight differences in the geometry and mounting locations'' between each model of the affected motorcycles, the passenger footrest ''is attached to the mounting bracket and the bracket is bolted to the motorcycle frame.'' BMW notes that ''the mounting locations for the rider footrest are identical, but for the K 1600 GTL, the mounting location for the passenger footrest is higher.''

BMW states that despite there being ''no possibility for ground contact to occur with the passenger footrest'' while in a banked turn, BMW conducted an analysis ''to determine the distance between the passenger footrest and the ground when other motorcycle components contact the ground.'' [1] BMW also conducted test rides with the affected K 1600 GTL and K 1600 Grand America model motorcycles.

For the analysis, BMW examined the ''various components that could contact the ground during a banked turn'' and ''the lean angles at which a specific component will contact the ground.'' BMW explains that the ''lean angle is the angle that is subtended by the intersection of a plane passing through the longitudinal axis of the motorcycle when it is upright (vertical), and a plane passing through the longitudinal axis of the motorcycle when the motorcycle is at a specific angle (*i.e.,* the lean angle) from upright (vertical).''

As a result of the analysis, BMW found that it is not possible for the passenger footrest on the subject vehicles to contact the ground while in a banked turn. Furthermore, BMW says that ''if the lean angle is increased, there are a number of motorcycle components that would contact the ground and, at those points, the passenger footrest is still approximately several inches from the ground.''

BMW says that it has not received any complaints from vehicle owners and is not aware of any accidents or injuries that have occurred because of this issue. Additionally, BMW says that vehicle production has been corrected.

BMW concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[2]

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[3] In general, NHTSA does not

[1] Details of BMW's analysis can be found in its petition at *https://www.regulations.gov/document/NHTSA-2021-0037-0001.*

[2] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[3] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR

consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[4]

NHTSA has evaluated the merits of the inconsequential noncompliance petition and supplemental materials submitted by BMW and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, the Agency considered the following when making its decision:

In pertinent part, S5.2.5 requires that each footrest for a passenger other than an operator fold rearward and upward when not in use. NHTSA has issued several interpretations of section S5.2.5. In a letter dated February 16, 1982, to American Honda Motor Co., Inc., with respect to a proposed footboard design, the then Chief Counsel commented that ''[w]e consider that the purpose of S5.2.5 is to prevent accidents caused by rigid footrests contacting the ground in a banking turn.'' [5] Various other NHTSA letters provided the same interpretation of the footrest requirement in S5.2.5.[6]

BMW conducted a measurement analysis for the K1600 GTL Motorcycle including lean angle to determine the distance between the passenger footrest and the ground when other motorcycle components contact the ground during a banked turn. The analysis indicated that the first component that would contact the ground would be the rider's footrest at 39 degrees lean angle, followed by other components such as the engine spoiler that would contact the ground at 43 degrees. Next, components including the center stand would contact the ground at 46 degrees. The BMW analysis demonstrated that, as the motorcycle lean angle increases, all of these components contact the ground well before the passenger footrest would make contact with the ground.

Additionally, BMW conducted a measurement analysis for the K1600 B Motorcycle including lean angle to determine the distance between the passenger footrest and the ground when other motorcycle components contact the ground during a banked turn. The analysis indicated that the first component that would contact the ground would be the rider's footrest at 39 degrees, followed by other components such as the engine spoiler that would contact the ground at 42 degrees. Next, components including the engine spoiler would contact the ground at 43.5 degrees. According to BMW's analysis, as the motorcycle lean angle increases, all of these components contact the ground before the passenger footrest would make contact with the ground.

Furthermore, BMW conducted a measurement analysis for the K1600 Grand America Motorcycle including lean angle to determine the distance between the passenger footrest and the ground when other motorcycle components contact the ground during a banked turn. The analysis indicated that the first component that would contact the ground would be the rider's floorboard at a lean angle of 34.5 degrees, followed by other components such as the rider footrest that would contact the ground at 39 degrees. Next, components including the silencer would contact the ground at 42 degrees. As motorcycle lean angle increases, all of these components contact the ground well before the passenger footrest would *make* contact with the ground.

BMW also conducted real-world test rides with a K 1600 GTL and with a K 1600 Grand America. On-board videos were taken to provide a close-up view of certain components prior to, and at, contact with the ground. The videos confirmed the findings from the measurement analysis.

NHTSA considers the purpose of S5.2.5 is to prevent accidents caused by rigid passenger footrests contacting the ground when a motorcycle is leaned over in a turn. BMW's measurement analysis and real-world testing clearly demonstrate there is no possibility for the passenger footrests to contact the ground while the motorcycle is under control in a banked turn because numerous other components would contact the ground first, preventing either passenger footrest from ever contacting the ground. Therefore, this noncompliance is inconsequential to motor vehicle safety.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that BMW has met its burden of persuasion that the subject FMVSS No. 123 noncompliance in the affected motorcycles is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted, and BMW is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject motorcycles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorcycles under their control after BMW notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–23529 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–59–P

35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[4] *See* Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance, 81 FR 21663, 21666 (Apr. 12, 2016); see also United States v. Gen. Motors Corp., 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *https://www.nhtsa.gov/interpretations/aiam3524.*

[6] An earlier interpretation from 1973 also to American Honda stated that S5.2.5 regulates ''only the direction in which footrests shall retract, so that if they are inadvertently left down when not in use they will fold rearward and upward should they hit an obstacle while the motorcycle is travelling forward.'' That interpretation suggests that contact of the footrests with obstacles other than the ground or roadway may be a consideration. However, all other agency interpretations of S5.2.5 focus on footrest contact with the ground/roadway. *See https://www.nhtsa.gov/interpretations/nht73-622.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0064; Notice 2]

Mercedes-Benz USA, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Mercedes-Benz AG and Mercedes-Benz USA, LLC, (collectively, ''Mercedes-Benz'' or ''Petitioner'') have determined that certain model year (MY) 2020 Mercedes-Benz GLS 580 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated Window, Partition, and Roof Panel Systems.* Mercedes-Benz filed a noncompliance report dated May 11, 2020, and subsequently petitioned NHTSA on June 3, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Mercedes-Benz's petition.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7487, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz has determined that certain MY 2020 Mercedes-Benz GLS 580 motor vehicles do not fully comply with the requirements of paragraph S6(a)(1) of FMVSS No. 118, *Power-operated Window, Partition, and Roof Panel Systems* (49 CFR 571.118). Mercedes-Benz filed a noncompliance report dated May 11, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mercedes-Benz subsequently petitioned NHTSA on June 3, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Mercedes-Benz petition was published with a 30-day public comment period, on October 23, 2020, in the **Federal Register** (85 FR 67604). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0064.''

II. Vehicles Involved: Mercedes-Benz stated that it determined that 22 MY 2020 Mercedes-Benz GLS 580 motor vehicles manufactured between February 8, 2019, and September 20, 2019, do not meet the requirements of FMVSS No. 118, S6(a)(1).

III. Noncompliance: Mercedes-Benz explains that the noncompliance is that the automatic reversal systems and actuation devices for the sunroofs in the subject vehicles do not fully comply with paragraph S6(a)(1) of FMVSS No. 118. Specifically, when the vehicle's ''car wash mode'' is activated by using the central touch display in the center console, the sunroof may close automatically.

IV. Rule Requirements: Paragraph S6(a)(1) of FMVSS No. 118 includes the requirements relevant to this petition. An actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested using a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of 20 mm ± 0.2 mm, when the surface of the sphere is placed against any portion of the actuation device.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section are the views and arguments provided by Mercedes-Benz and do not reflect the views of NHTSA. Mercedes-Benz describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mercedes-Benz offers the following reasoning:

1. Mercedes-Benz alleges that ''due to their specific operating parameters, even though the buttons used to activate car wash mode do not meet the performance requirement of paragraph S6(a), the condition does not create an increased safety risk.''

2. First, Mercedes-Benz states, ''the car wash mode feature must first be activated by the user. Car wash mode is not automatically enabled unless and until the operator activates the feature by affirmatively accepting the option and turning the feature on. Thus, unless car wash mode is already active within the vehicle, the condition described above cannot occur.''

3. Mercedes-Benz further states, ''[o]nce the vehicle has initialized car wash mode, the feature can only be activated through a series of steps using either the vehicle's central touch display or from a touchpad located in the center console. Activating car wash mode is a multi-step process and the process varies depending on the current menu contained on the display screen. For example, if car wash mode has been programmed by the user inside the ''favorites'' menu, then a series of two touches is needed to activate car wash mode. In all other cases, the operator would first need to change the display screen to the vehicle menu first and from there, navigate to the car wash mode icon. In either case, car wash mode will not become active unless each of these steps is executed in the corresponding order. Because of the complexity involved in navigating through the required sequence of events there is an extremely low likelihood of the car wash mode being inadvertently activated in the first place.''

4. Further, Mercedes-Benz claims ''the sunroofs in the subject vehicles contain an auto-reverse feature. Upon detecting an object or obstruction inside the sunroof, it will automatically stop and reverse course and fully retract. While the sunroofs do not meet the requirements of paragraph S5, Mercedes-Benz states that they are certified to the European standard UN–R–21. The European standard incorporates many of the performance features included in the automatic reversal function contained in FMVSS No. 118, paragraph S5. The sunroofs in the subject vehicles will automatically reverse prior to exerting 100 Newtons of pinch force, and consistent with the options provided at paragraph S5.2, the sunroof will either retract to a position at least as wide as the initial position before closing or will allow a 200-mm rod to be inserted in the gap.''

5. Mercedes-Benz says that NHTSA ''has previously granted petitions for inconsequential treatment for FMVSS No. 118 involving similar circumstances and vehicle features. NHTSA granted a petition by General Motors involving a noncompliance with FMVSS No. 118, paragraph S4(e), where for 60 seconds after the vehicles are started, an issue with the sunroof module would allow the sunroof to close via the control button if the engine is turned off and a front door is opened. In that instance, in order to activate the sunroof, a series of specific steps must be taken in order and the steps must be completed within a 60-second time frame. *See* General Motors Corporation, Grant of Petition for Decision of Inconsequential Noncompliance, 73 FR 22459 (April 25, 2008). In granting the petition, the Agency found that the potential for entrapment in a power operated sunroof presented less of a risk of entrapment than power-operated windows because, in general, sunroofs are less physically accessible than power-operated windows. The decision also focused on the presence of an auto-reverse feature, which would reverse the movement of the sunroof before it exerted a pressure of 100 Newtons. In granting the petition, the Agency noted the presence of this auto-reverse feature as one that would further reduce the risk of entrapment.''

6. Mercedes-Benz further asserts that ''much like the conditions present in the General Motors Corporation vehicles,

the noncompliance in the car wash mode feature of the subject vehicles similarly does not create an increased safety risk. Assuming that the function has been initialized by the operator, a series of specific and coordinated steps must occur in order to activate car wash mode. If those steps are not carried out in the precise order required, then the car-wash mode program will not be activated. Even in the unlikely event that the car wash mode function is inadvertently activated, there is no enhanced risk of injury because of the sunroof auto-reverse feature.''

Mercedes-Benz concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, NHTSA has not found many such noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

NHTSA has reviewed the Mercedes-Benz inconsequentiality petition and does not concur with Mercedes-Benz's conclusion that the noncompliance is inconsequential to motor vehicle safety and is denying Mercedes-Benz's petition.

FMVSS 118 S6 sets performance requirements intended to mitigate the potential for injury from a window or sunroof being inadvertently closed when a person is in its path. Under the standard, the operating controls may not allow a window, sunroof or partition to close when a test sphere (simulating a child's knee) is pressed against the control. Specifically, FMVSS No. 118 S6(a)(1) requires that ''an actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested . . . [u]sing a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of 20 mm ± 0.2 mm, place the surface of the sphere against any portion of the actuation device.''

According to the Mercedes-Benz petition, ''the actuation devices used to engage car wash mode do not meet the inadvertent activation provisions of FMVSS No. 118 S6(a)(1).'' However, Mercedes-Benz argues activating car-wash mode is a multi-step process and the process varies depending on the current menu contained on the display screen of a particular vehicle. After considering information provided by Mercedes-Benz and from online descriptions of the system, NHTSA believes there is a minimal level of complexity involved in navigating through the required sequence of events to actuate and close the sunroof. The controls at issue include those located on the console between the front seats where a child could easily stand or kneel. Given the unpredictable behavior of an unattended child, inadvertent selection of the ''Quick Access'' or ''Favorite'' hard buttons, where the ''Car Wash Mode'' icon can be located, is a foreseeable and appreciable risk. Car Wash Mode can be programmed as the only selectable icon within the ''Favorite'' menu, increasing its susceptibility to accidental engagement.

In their petition, Mercedes-Benz states, ''the sunroofs in the subject vehicles contain an auto-reverse feature. Upon detecting an object or obstruction inside the sunroof, it will automatically stop and reverse course and fully retract. While the sunroofs do not meet the requirements of S5, they are certified to the European standard UN–R–21. The European standard incorporates many of the performance features included in the automatic reversal function contained in FMVSS 118, S5.'' NHTSA acknowledges that the sunroofs in the Mercedes-Benz vehicles in question are compliant with UN–R–21, but Mercedes-Benz concedes they do not comply with FMVSS 118 S5, NHTSA's regulations governing automatic reversal systems. While UN–R–21 does provide a level of safety, FMVSS 118 S5 provides a greater level of protection from pinching injuries, particularly to smaller appendages like a child's fingers.

Finally, in the petition Mercedes-Benz claims the circumstances here are analogous to the circumstances in a previous NHTSA determination that

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[6] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

noncompliance was inconsequential. NHTSA considers each petition on its own merits and the prior decision cited by the Petitioner has limited applicability in this case. NHTSA believes the circumstances for accidental window/sunroof closure involved in the cited General Motors (GM) petition are significantly different than those required under Mercedes-Benz current petition. In granting the GM petition, the agency was persuaded that the high level of complexity involved in navigating through the required sequence of events effectively eliminated any entrapment risk, particularly the limited timeframe within which the events would have to occur. Specifically, NHTSA stated, ''[i]t is very unlikely that the entire sequence of events—starting the engine, turning the engine off, opening a front door, a person becoming positioned in the sunroof opening, and pushing the sunroof close button—will occur in less than 60 seconds from the time the ignition is turned off and the vehicle operator has exited the vehicle and left the immediate area.'' General Motors, Decision Granting Petition for Inconsequential Noncompliance, 73 FR 22459 (April 25, 2008). In contrast, the noncompliance in the Mercedes-Benz petition does not involve as great a level of complexity in the required sequence of events that would lead to sunroof engagement. The Mercedes-Benz petition states, in the subject vehicles, as few as two inputs to the centralized control devices is sufficient to actuate and close the sunroof, *i.e.,* with Car Wash Mode included in the ''Favorites'' menu. Furthermore, the touch screens at issue here remain activated indefinitely until the vehicle is turned off or a user activates a command. NHTSA therefore does not agree that the prior determination in the GM case is analogous or persuasive here.

Therefore, Mercedes-Benz has not met its burden of persuasion and for the reasons described herein NHTSA does not find that the subject noncompliance is inconsequential to motor vehicle safety.

VII. NHTSA's Decision: In consideration of the foregoing analysis, NHTSA finds that Mercedes-Benz has not met its burden of persuasion that the FMVSS No. 118 noncompliance at issue is inconsequential to motor vehicle safety.

Accordingly, Mercedes-Benz's petition is hereby denied and Mercedes-Benz is consequently obligated to provide notification of, and a free remedy for, the noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Cem Hatipoglu,

Acting Associate Administrator for Enforcement.

[FR Doc. 2023–23528 Filed 10–24–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunities: Small Dollar Loan Program; 2024 Funding Round

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for the fiscal year (FY) 2024 Funding Round of the Small Dollar Loan Program (SDL Program).

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2024–SDL.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.025.

Dates:

TABLE 1—FY 2024 SMALL DOLLAR LOAN PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
OMB Standard Form (SF)–424 Mandatory form ..	November 20, 2023	11:59 p.m.	Electronically via *Grants.gov.*
Last day to enter the Employer Identification Number (EIN) and Unique Entity Identifier (UEI) numbers in AMIS.	November 20, 2023	11:59 p.m.	Electronically via Awards Management Information System (AMIS).
Last day to contact SDL Program Staff	December 18, 2023	5 p.m.	Service Request via AMIS or CDFI Fund Helpdesk: 202–653–0421 or *sdlp@cdfi.treas.gov.*
Last day to contact the Certification, Compliance Monitoring and Evaluation (CCME) Help Desk.	December 18, 2023	5 p.m.	CCME Helpdesk: 202–653–0423 or Compliance and Reporting AMIS Service Request.
Last day to contact IT Help desk regarding AMIS support only.	December 20, 2023	5 p.m.	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.
Last day to submit Title VI Compliance Worksheet (all Applicants)*.	December 20, 2023	5 p.m.	Electronically via AMIS.
SDL Program Application and Required Attachments.	December 20, 2023	5 p.m.	Electronically via AMIS.

*This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of federal financial assistance (e.g., Depository Institutions Holding Company and their Subsidiary Depository Institutions).

Executive Summary: The Small Dollar Loan Program (SDL Program) is administered by the Community Development Financial Institutions Fund (CDFI Fund). Through the SDL Program, the CDFI Fund provides (1) grants for Loan Loss Reserves (LLR) to enable a Certified Community Development Financial Institution (CDFI) establish a loan loss reserve fund in order to cover the losses on small dollar loans associated with starting a new small dollar loan program or expanding an existing small dollar loan program; and (2) grants for Technical Assistance (TA) for technology, staff support, and other eligible activities to enable a Certified CDFI to establish and maintain a small dollar loan program. All awards provided through this Notice of Funds Availability (NOFA) are subject to funding availability.

I. Program Description

A. Authorizing Statute: The SDL Program is authorized by Title XII—Improving Access to Mainstream Financial Institutions Act of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203), which amended the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325) to include the SDL Program

(12 U.S.C. 4719). For a complete understanding of the program, the CDFI Fund encourages Applicants to review the SDL Program funding application (referred to hereafter as the ''Application,'' meaning the application submitted in response to this NOFA) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (Uniform Requirements). Each capitalized term used in this NOFA, but not defined herein, shall have the respective meanings assigned to them in the Application or the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials at *www.cdfifund.gov/sdlp.*

B. History: The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has provided more than $7.4 billion through a variety of monetary awards programs to CDFIs, community development organizations, and financial institutions. In addition, the CDFI Fund has allocated $71 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program (NMTC Program) and has guaranteed more than $2.1 billion in bonds through the CDFI Bond Guarantee Program.

C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: The Uniform Requirements codify financial, administrative, procurement, and program management standards that federal award-making agencies must follow. Per the Uniform Requirements, when evaluating Applications, awarding agencies must evaluate the risks to the program posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and single audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for award Recipients.

D. Priorities: The purpose of the SDL Program is to provide grants for LLR and TA to qualified organizations to establish and maintain small dollar loan programs that are safe, affordable, and responsible. SDL Program funding is intended to expand consumer access to financial institutions by providing alternatives to high-cost small dollar lending. The SDL Program funding is also intended to help unbanked and underbanked populations build credit, access affordable capital, and allow greater access into the mainstream financial system. To pursue these objectives, the CDFI Fund will prioritize funding for Applications that propose to offer small dollar loan programs that include any of the following characteristics: (1) offer small dollar loan terms that are at least ninety (90) days; (2) use underwriting that considers the borrower's ability to repay a loan based on both the borrower's income and expenses; (3) make loan decisions within one business day after receipt of required documents; (4) offer a reduction in the borrower's loan rate if the borrower elects to use automatic debit payments; (5) offer automatic savings features that are built into the regularly-scheduled payments on a loan—provided that the resulting payment is still affordable—or, at a minimum, loans that can be structured so that, subject to the borrower's consent, payments continue for a period of time after the loan is repaid with all of the payments going into a savings vehicle; and (6) offer access to financial education, including credit counseling, particularly if the Applicant offers financial education programs that are used as substitutes for late fees and overdraft fees when borrowers are at risk of incurring a late fee or overdraft fee.

E. Funding limitations:

1. The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

2. *Prohibited Practices:* SDL Program Awards may not be used to support small dollar loan programs that have any of the lending practices and loan characteristics listed in table 2.

TABLE 2—SDL PROGRAM PROHIBITED PRACTICES

Prohibited practice	Prohibited practice definition
i. High-Rate loans	Loans that exceed the lower of the following two rates: (1) an all-inclusive 36% APR; or (2) the interest rate limit as set by the state agency that oversees financial institutions in your state.
ii. Coerced automated repayments	Loans that: (1) have delayed loan disbursements for borrowers who do not agree to automatic repayments, (2) charge fees for borrowers who select manual payments, or (3) require borrowers to make payments using wire transfers or other means that may result in additional fees for borrowers.
iii. Excessive refinancing	Loans that allow refinancing before at least 80% of the principal has been repaid.
iv. Loan insurance or credit card add-ons	Loans that offer add-on insurance or credit card products, whether they are automatic or not, that require borrowers to opt-in or opt-out to decline coverage or require the borrower to accept or opt-out of a credit card. For example, loans that automatically include insurance products such as credit, life, disability insurance or involuntary unemployment insurance coverage, or loans that automatically open a credit card for the borrower.
v. Security interests in household goods, vehicles, or deposit accounts. Exception: loans with a savings account component or credit builder loans.	Loans that are secured, except for loans secured by a savings account for loans with a savings component or credit builder loans.
vi. Excessive late fees on missed loan payments.	Loans that charge more than one fee per late payment.
vii. Abusive overdraft practices	Lenders who hold the account from which repayment is being made may not collect a loan payment from the borrower's account that overdraws the account, triggering overdraft fees.
viii. Aggressive debt collection practices	Loans in which the lender: • Does not offer a workout program or other accommodations to help struggling borrowers before pursuing other debt collection avenues.

TABLE 2—SDL PROGRAM PROHIBITED PRACTICES—Continued

Prohibited practice	Prohibited practice definition
	• All debt collection activities must comply with the Fair Debt Collection Practices Act, whether conducted by the lender, a contract debt collector or sold to third party debt collectors. • Does not disclose to borrowers the details of its debt collection practices or provide notice to a borrower when its account is placed with debt collectors.
ix. Forced arbitration clause, class action ban, and other bans on legal remedies.	Loan contracts that contain clauses that prevent borrowers from seeking legal remedies in court, such as mandatory arbitration clauses, or clauses requiring that the borrower waive the right to a trial by jury or the right to participate in a class action lawsuit.

F. *SDL Program Statutory Requirements:*

1. SDL Program Awards may not be used to provide direct loans to consumers.

2. SDL Program Awards may only be used to support small dollar loan programs that offer small dollar loans to consumers that:

(a) are made in amounts that do not exceed $2,500;

(b) must be repaid in installments;

(c) have no prepayment penalty;

(d) have payments that are reported to a least one of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and

(e) are underwritten with standards that consider the consumer's ability to repay.

II. Federal Award Information

A. Funding Availability: The CDFI Fund expects to award up to $18 million through this NOFA. The final funding availability will be determined by passage of a final budget for FY 2024. The CDFI Fund also reserves the right to award less than this amount. The following table identifies the minimum and maximum award amounts for Loan Loss Reserves, Technical Assistance, and a Combination of Loan Loss Reserves and Technical Assistance.

TABLE 3—SDL PROGRAM MINIMUM AND MAXIMUM AWARD AMOUNTS

Eligible awards	Award amount	
	Minimum	Maximum
Loan Loss Reserves	$20,000	Up to 20% of the Applicant's 3-year Projected Total On-Balance Sheet Small Dollar Loans to be closed, not to exceed $350,000.
Technical Assistance	20,000	$150,000.
Combination of Loan Loss Reserves and Technical Assistance.	40,000	$500,000 (Up to 20% of the Applicant's 3-year Projected Total On-Balance Sheet Small Dollar Loans to be closed, not to exceed $350,000 *plus* $150,000).

Eligible Applicants may submit only one SDL Program Application and therefore will need to determine if they are applying for an LLR grant, a TA grant, or both. The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

B. Types of Awards: The CDFI Fund will provide SDL Program Awards for LLR and TA in the form of grants to support the eligible activities as set forth in this NOFA and Application.

C. Anticipated Start Date and Period of Performance: The Period of Performance for each SDL Program Award begins with the date that the CDFI Fund announces the Recipients of the FY 2024 SDL Program Awards and includes a Recipient's three full consecutive fiscal years after the date of the Award announcement, during which time the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Budget Period for an SDL Program Award is the same as the Period of Performance.

D. Eligible Activities: An SDL Program Award must support or finance activities to establish and maintain small dollar loan programs that are safe, affordable, and responsible. SDL Program Awards may only be used as follows:

1. Loan Loss Reserves: Loan Loss Reserve (LLR) Awards must be set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on small dollar loans. LLR Awards may be used to mitigate losses on a new or established small dollar loan program. LLR Award Recipients must meet Performance Goals and Measures, which will be derived from projections and attestations provided by the Applicant in its Application, prior to the end of the Period of Performance.

2. Technical Assistance: TA Awards may be used for technology, staff support, and other costs associated with establishing and maintaining a small dollar loan program as listed in table 4. The seven eligible activity categories are: (i) Compensation—Personal Services; (ii) Professional Service Costs; (iii) Travel Costs; (iv) Training and Education Costs; (v) Equipment; (vi) Supplies; and (vii) Development Services. The TA Award must be expended in these activity categories before the end of the Period of Performance. None of the eligible activity categories are authorized for indirect costs or an associated indirect cost rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E-Cost Principles.

SDL Program Recipients must meet certain PG&Ms which will require the Recipient to expend the SDL Program Award on eligible activities and close small dollar loans.

(a) TA Award Recipients that will use the SDL Program Award to start a new small dollar loan program must expend at least 50% of the Recipient's TA Award amount by the end of the first year of the Period of Performance on eligible activities to start a new small

dollar loan program and expend 100% of the total Award amount by the Period of Performance end date on eligible activities to start a new small dollar loan program.

(b) TA Award Recipients that will use the SDL Program Award to expand an existing small dollar loan program must expend at least 75% of the Recipient's TA Award amount by the end of the first year of the Period of Performance on eligible activities to expand an existing small dollar loan program and expend 100% of the total Award amount by the Period of Performance end date on eligible activities to expand an existing small dollar loan program.

3. All SDL Program Award Recipients must close small dollar loans based on the three-year projected small dollar loan total to be closed as proposed in the Application, demonstrating an increase in lending. This amount may be adjusted based on Award size. Final PG&Ms may differ and will be set forth in the final SDL Program Assistance Agreement.

For purposes of this NOFA, the seven eligible TA activity categories are defined below:

TABLE 4—ELIGIBLE TECHNICAL ASSISTANCE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS

(i) Compensation—Personal Services	TA paid to cover all remuneration, paid currently, or accrued, for services of Applicant's employees related to establishing or maintaining the Applicant's small dollar loan program rendered during the Period of Performance under the TA grant in accordance with section 200.430 of the Uniform Requirements. Any work performed directly, but unrelated to the purposes of the TA grant may not be paid as Compensation through a TA grant. For example, the salaries for building maintenance are not related to the purpose of a TA grant and would be deemed unallowable.
(ii) Professional service costs	TA used to pay for professional and consultant services (e.g., such as strategic and marketing plan development) related to establishing or maintaining the Applicant's small dollar loan program, rendered by persons who are members of a particular profession or possess a special skill (e.g., credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 200.459 of the Uniform Requirements. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee.
(iii) Travel costs	TA used to pay costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to establishing or maintaining the Applicant's small dollar loan program, in accordance with section 200.475 of the Uniform Requirements. Travel costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA grant would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA grant.
(iv) Training and education costs	TA used to pay the cost of training and education provided by the Applicant for employees' development in accordance with section 200.473 of the Uniform Requirements. TA can only be used to pay for training costs incurred by the Applicant's employees related to establishing or maintaining the Applicant's small dollar loan program. Training and education costs may not be incurred by the Applicant's consultants.
(v) Equipment	TA used to pay for tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, as defined in section 200.1 of the Uniform Requirements, related to establishing or maintaining the Applicant's small dollar loan program. For example, items such as information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 with respect to the purchase of Equipment.
(vi) Supplies	TA used to pay for tangible personal property with a per unit acquisition cost of less than $5,000, as defined in section 200.1 of the Uniform Requirements, related to establishing or maintaining the Applicant's small dollar loan program. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 with respect to the purchase of Supplies.
(vii) Development Services	TA used to pay for activities undertaken by an Applicant that prepares or assists current or potential borrowers to use the Applicant's small dollar loan program. For example, such activities include financial education, including credit counseling.

E. Persistent Poverty Counties: Pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) and Consolidated Appropriations Act, 2023 (Pub. L. 117–103), Congress mandated that at least 10% of the CDFI Fund's appropriations be directed to counties that meet the criteria for ''Persistent Poverty'' designation. Persistent Poverty Counties (PPCs) are defined as any county, including county equivalent areas in Puerto Rico, that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2016–2020 5-year data series available from the American Community Survey of the Census Bureau, or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010 Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census and published by the CDFI Fund at: *https://www.cdfifund.gov/sites/cdfi/files/2023-03/PPC_2020_ACS_Jan20_2023.xlsx.* To comply with this mandate, the CDFI Fund will prioritize funding to Applicants that have headquarters (as stated in the Applicant's Application) located in PPCs.

III. Eligibility Information

A. Eligible Applicants: To be eligible to apply for an SDL Program Award, Eligible Applicants must be duly organized as a legal entity (within the United States or its territories) and meet the criteria below:

1. For LLRs:

(a) a Certified Community Development Financial Institution (CDFI); or

(b) a partnership between a Certified CDFI and a Federally Insured Depository Institution [1] (FIDI) with a primary mission to serve targeted Investment Areas.[2]

(A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and (ii) has significant unmet needs for loans or equity investments; or

(B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986.

2. For TA:

(a) a Certified CDFI; or

(b) a partnership between two or more Certified CDFIs.

3. For Combination of LLR and TA:

(a) a Certified CDFI.

Eligible Applicants may submit only one SDL Program Application and therefore will need to determine if they are eligible and applying for LLR, TA, or both.

For purposes of the Application, the term ''Applicant'' refers to an organization applying on its own as a Certified CDFI or refers to the designated lead Certified CDFI applying on behalf of a partnership. The Applicant must use the SDL Program Award to establish or maintain a small dollar loan program. In the case of a partnership, the designated lead Certified CDFI must use the SDL Program Award to establish or maintain a small dollar loan program.

B. Additional Guidance on Applicants Applying as Partnerships: The partnership must designate a lead Certified CDFI for the partnership that will submit the Application. This designated lead Certified CDFI will also submit a written partnership agreement (*e.g.,* Memorandum of Understanding) detailing roles and responsibilities of the partners, partner replacement or substitution restrictions, any financial contributions and profit-sharing arrangements, and performance requirements for the entities in the partnership.

A partner may be a FIDI, if the partnership is applying for an LLR Award, or a Certified CDFI, if the partnership is applying for a TA Award. A partner may not apply for its own Award under the FY 2024 SDL Program funding round or apply as a partner for more than one Application submitted under the FY 2024 SDL Program funding round. A partnership is a formal arrangement, as evidenced by a written partnership agreement (*e.g.,* Memorandum of Understanding), between a Certified CDFI and a FIDI or between two or more Certified CDFIs. The partnership must be designed to accomplish one or more of the strategic goals discussed in the Business Strategy and Community Impact section of the SDL Applicant's Application and be integral to the successful completion of the Applicant's strategic goal(s). The partnership should be such that the Applicant's strategic goal(s) would not be achievable without the direct input and/or assistance of the partner. An Applicant that collaborates or coordinates with a FIDI or a CDFI to achieve the strategic goals detailed in the Application is not required to apply as a partnership. Applicants that apply as a partnership will be evaluated based on the same criteria as Applicants that apply without a partnership. If selected to receive an SDL Program Award, the lead Certified CDFI Recipient will be solely responsible for carrying out the activities described in its Application and complying with the terms and conditions of the Assistance Agreement. The partner(s) will not be a co-Recipient of the award. As such, the lead Certified CDFI Recipient will be prohibited from using the SDL Program Award to fund any activity carried out directly by the partner or an Affiliate or Subsidiary thereof. Examples of partnerships include the following:

Applying as a Partnership

Example 1: ABC Certified CDFI has a strategic goal of increasing its small dollar lending by X% over X number of years. ABC Certified CDFI will request an SDL Program Award for LLR to mitigate losses on the small dollar loans it provides as it seeks to expand its small dollar loan program. ABC Certified CDFI has a Partnership Agreement in place with a local FIDI in which the FIDI will refer all small dollar loan candidates to ABC Certified CDFI to expand ABC Certified CDFI's small dollar loan program. ABC Certified CDFI will explain in its narrative and Partnership Agreement how an SDL Program Award for LLRs and the referrals from the local FIDI partner will ensure that its strategic goal of increasing small dollar lending is achieved.

Example 2: XYZ Certified CDFI has a strategic goal to provide a new small dollar loan product. XYZ Certified CDFI will request an SDL Program Award for TA to upgrade its technology systems to support a new small dollar loan product. XYZ Certified CDFI has a Partnership Agreement in place with a Certified CDFI that will provide free financial counseling services to the XYZ Certified CDFI's small dollar loan Applicants. XYZ Certified CDFI chooses to apply as a partnership with the Certified CDFI as its partner. XYZ Certified CDFI will explain in its narrative and Partnership Agreement how a SDL Program Award for TA and the financial counseling provided to potential borrowers will support the growth of the new small dollar loan program.

Note: A Certified CDFI Depository Institution Holding Company Applicant that intends to carry out the activities of an Award through its Subsidiary Certified CDFI Insured Depository Institution should not apply as a partnership. Instead, the Certified CDFI Depository Institution Holding Company should apply as a sole entity. Table 5 indicates the criteria that each Application must meet in order to be eligible for an SDL Program Award pursuant to this NOFA.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS

All Applicants	• Must be a Certified CDFI as set forth in 12 CFR 1805.201 and the CDFI Fund has officially notified the entity that it meets all CDFI Certification requirements as of the publication date of this NOFA. ○ The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report if the CDFI Fund has not yet made a final compliance determination.

[1] A ''federally insured depository institution'' is any insured depository institution as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any insured credit union as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

[2] 12 U.S.C. 4702(16), Investment Area—The term ''investment area'' means a geographic area (or areas) including an Indian reservation that—

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS—Continued

	○ If a Certified CDFI loses its certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an Award by the CDFI Fund.
	• The financial information in the Application (including any uploaded attachments) should only reflect the activities of the entity that will carry out the proposed award activities. Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application. Also, do not include financial or portfolio information from partner entities if the Applicant is applying as a partnership.
	• An Applicant that applies on behalf of another organization will be rejected without further consideration, other than Depository Institution Holding Companies (see below).
FIDI Partner	• Is not required to be a Certified CDFI.
	• Must have a primary mission to serve targeted Investment Areas.
Application and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in table 6.
	• The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered.
	• Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different locations: (1) the SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS.
	• *Grants.gov* and the Standard Form 424 (SF–424):
	○ *Grants.gov:* Applicants must submit the SF–424, Application for Federal Assistance.
	○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The CDFI Fund strongly encourages Applicants to register as soon as possible.
	○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline, except in the case of a federal government administrative or federal technological error that directly resulted in a late submission of the SF–424.
	○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in table 1 and table 8. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* portal.
	○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline.
	○ The SF–424 must be submitted under the SDL Program Funding Opportunity Number for the SDL Program Application.
	○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible.
	• AMIS and all other Required Application Documents listed in table 6:
	○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund.
	○ Applicants are only allowed one SDL Program Application submission in AMIS.
	○ Each Application in AMIS must be signed by an Authorized Representative.
	○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.*
	○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS.
	○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in tables 1 and 6.
	○ The CDFI Fund will not extend the deadline for any Applicant except in the case of a federal government administrative or federal technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS).
	• The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization.
	• The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account.
	• Applicants must enter their EIN into their AMIS profile by the deadline specified in tables 1 and 6.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a federal, government-wide initiative.
	• The CDFI Fund will reject an Application submitted with the UEI number of a parent or Affiliate organization.
	• The UEI number in the Applicant's AMIS account must match the UEI number in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI number in the Applicant's AMIS account does not match the UEI number in its *Grants.gov* and SAM accounts.
	• Applicants must enter their UEI number into their AMIS profile on or before the deadline specified in tables 1 and 6.
	• For Applicants applying as a partnership, the UEI number of the designated lead Certified CDFI Applicant in AMIS must match the UEI number on the SF–424 submitted through *Grants.gov*.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS—Continued

System for Award Management (SAM)	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration are already assigned a UEI. Applicants must also have an EIN number in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the time period between the submission of the Applicant's SF–424 and the Award announcement, or is set to expire before September 30, 2024 and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501(c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a SDL Program grant.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant* may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination within the time period beginning three years prior to the publication of this NOFA until the execution of the Assistance Agreement that indicates the Applicant has violated any of the following laws, including but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107). • Applicants* will be required to submit the Title VI Compliance Worksheet (Worksheet) once annually to assist the CDFI Fund in determining whether Applicants are compliant with the Treasury regulations implementing Title VI of the Civil Rights Act (Title VI), set forth in 31 CFR part 22. These requirements are set forth in the United States Department of the Treasury regulations implementing Title VI located in 31 CFR part 22, Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury. • In addition, an Applicant* must be compliant with federal civil rights requirements in order to be deemed eligible to receive an award from the CDFI Fund. The CDFI Fund will consider an Application submitted by an Applicant that has pending Title VI noncompliance issue, if the CDFI Fund has not yet made a final compliance determination. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Depository Institution Holding Companies (DIHC) [1]Applicant.	• In the case where a Certified CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Certified CDFI Insured Depository Institution, the Application must be submitted by the Certified CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary Certified CDFI Insured Depository Institution. • If a Certified CDFI Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution both apply for a SDL Program grant, only the Depository Institution Holding Company will receive an Award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the Award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of Award	• All Awards made through this NOFA must be used to support the Applicant's activities in at least one of the Eligible Activity Categories (see Section II. (D)). • With the exception of Depository Institution Holding Company Applicants, Awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. • The Recipient of any Award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. • For Applicants applying as a partnership, only the designated lead Certified CDFI may use the Award to carry out the activities of the Award.
Requested Award amount	• An Applicant must state its requested Award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• If an Applicant (or Affiliate of an Applicant) that is a prior Recipient or allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS—Continued

Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award Recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant (or Affiliate of such Applicant) is in noncompliance with or default of a previously executed assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant if the Applicant (or Affiliate of an Applicant) is delinquent on any federal debt. • The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.
Regulated Institutions[2]	• Each Regulated Institution SDL Program Applicant must have a CAMELS/CAMEL rating (rating for banks and credit unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of a ''1'', ''2'', or ''3''. • SDL Program Applicants with CAMELS/CAMEL ratings of ''4'' or ''5'' will not be eligible for awards. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.

[1] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.
[2] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

Any Applicant that does not meet the criteria in table 5 is ineligible to apply for an SDL Program Award under this NOFA.

C. Contacting the CDFI Fund: Accordingly, Applicants that are prior Recipients and/or allocatees under any CDFI Fund program are advised to comply with requirements specified in an Assistance Agreement, allocation agreement, bond loan agreement, or agreement to guarantee, and to ensure their Affiliates are in compliance with any agreements. All outstanding reporting and compliance questions should be directed to the Office of Compliance Monitoring and Evaluation (OCME) Help Desk by AMIS Service Requests or by telephone at (202) 653–0421; except in the case of SDL Program reporting and compliance questions, which should be directed to the SDL Program Help Desk by completing a Service Request through AMIS using ''Small Dollar Loan Program'' for the Service Request program. Alternatively, the public can contact SDL Program staff via email at *SDLP@cdfi.treas.gov* or by telephone at (202) 653–0421. The CDFI Fund will not respond to Applicants' reporting or compliance telephone calls or email inquiries that are received after 5:00 p.m. ET on December 11, 2023, until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts through 5:00 p.m. ET on December 14, 2023, via AMIS Service Requests, or at *AMIS@cdfi.treas.gov,* or by telephone at (202) 653–0422.

D. Matching Funds Requirements: The Matching Funds requirement for SDL Program Applicants was waived in the enacted FY 2023 Consolidated Appropriations Act, and the final FY 2024 appropriations are still pending. Therefore, SDL Program Applicants are not required to submit Matching Funds at the time of Application submission. However, the CDFI Fund reserves the right to request Matching Funds from SDL Program Applicants if Matching Funds are not waived in the final FY 2024 appropriations.

E. Other Eligibility Criteria:

1. How Affiliated Entities Can Submit an Application: As part of the Application review process, the CDFI Fund considers whether Applicants are Affiliates, as such term is defined in 12 CFR 1805.104. If an Applicant and its Affiliate(s) wish to submit an Application, they must do so through one of the Affiliated entities, in one Application; an Applicant and its Affiliates may not submit separate Applications. If Affiliates submit multiple or separate Applications, the CDFI Fund may, at its discretion, reject all such Applications received or select only one of the submitted Applications to deem eligible, assuming that Application meets all other eligibility criteria in Section III of this NOFA. Furthermore, an Applicant that receives an award in this SDL Program round may not become an Affiliate of another Applicant that receives an award in this SDL Program round at any time after the submission of an SDL Program Application under this NOFA. This requirement will also be a term and condition of the Assistance Agreement (see Application Frequently Asked Questions on the CDFI Fund's website at *http://www.cdfifund.gov/sdlp* for more details).

2. Required Loan Features: An Applicant will not be eligible to receive an SDL Program Award if the Applicant fails to demonstrate in the Application that its SDL Program Award would be used to establish or maintain a small dollar loan program that offers small dollar loans to consumers that:

(a) are made in amounts that do not exceed $2,500;

(b) must be repaid in installments;

(c) have no prepayment penalty; and

(d) have payments that are reported to at least one of the consumer reporting agencies that complies and maintain files on consumers on a nationwide basis.

3. Prohibited Practices. Applicants are not eligible to use SDL Program Awards to support small dollar loan programs that have the lending practices and loan characteristics listed in table 2.

IV. Application and Submission Information

A. Address to Request Application Package: Application materials can be found on the *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/sdlp.* Applicants may request a paper

version of any Application material by contacting the CDFI Fund Help Desk by email at *sdlp@cdfi.treas.gov* or by telephone at (202) 653–0421.

B. Content and Form of Application Submission: The CDFI Fund will post to its website, at *www.cdfifund.gov/sdlp,* instructions for accessing and submitting an Application. Detailed Application content requirements are found in the Application and related guidance documents.

All Applications must be prepared in English and calculations must be made in U.S. dollars. Table 6 lists the required funding Application documents for the FY 2024 SDL Program Round. Applicants must submit all required documents for the Application to be deemed complete. Please be aware that an Applicant that fails to submit audited financial statements for its two most recently completed fiscal years will be deemed as not having a complete Application and will be considered ineligible. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Information submitted must accurately reflect the activities of the Applicant and/or its Subsidiary Insured Depository Institution, in the case where the Applicant is an Insured Depository Institution Holding Company.

TABLE 6—REQUIRED APPLICATION DOCUMENTS

Application document	Submission format	Required?
Active AMIS Account	AMIS	Required for all Applicants.
Standard Form (SF) 424 Mandatory Form	Fillable PDF in *Grants.gov*	Required for all Applicants.
SDL Program Application	AMIS	Required for all Applicants.
Title VI Compliance Worksheet	AMIS	Required for all Applicants *
Attachments to the Application		
Audited financial statements (two most recently completed fiscal years prior to the publication date of this NOFA).	PDF in AMIS	Required only for Loan funds, venture capital funds, and other non-Regulated Institutions.
Management Letter for the Applicant's Most Recently Completed Fiscal Year. The Management Letter is prepared by the Applicant's auditor and is a communication on internal control over financial reporting, compliance, and other matters. The Management Letter contains the auditor's findings regarding the Applicant's accounting policies and procedures, internal controls, and operating policies, including any material weaknesses, significant deficiencies, and other matters identified during auditing. The Management Letter may include suggestions for improving on identified weaknesses and deficiencies and/or best practice suggestions for items that may not be deemed weaknesses or deficiencies. The Management Letter may also include items that are not required to be disclosed in the annual audited financial statements. The Management Letter is distinct from the auditor's Opinion Letter, which is required by Generally Accepted Accounting Principles (GAAP). Management Letters are not required by GAAP and are sometimes provided by the auditor as a separate letter from the audit itself.	PDF in AMIS	Required only for Loan funds, venture capital funds, and other non-Regulated Institutions.
Year-end call reports for Applicant's two most recently completed fiscal years prior to the publication date of the NOFA (for additional guidance see FAQ).	PDF in AMIS	Required only for Regulated Institutions.
A Qualified Federally Insured Depository Institution (FIDI) Partnership Attestation Form demonstrating that the FIDI has a primary mission of serving targeted Investment Areas.	PDF in AMIS	Required only for a FIDI that is applying as a partnership with a Certified CDFI for an LLR Award.
A Partnership Agreement between a Certified CDFI and a FIDI that has a primary mission of serving targeted Investment Areas, applying for an LLR Award, *or* a Partnership Agreement between or among two or more Certified CDFIs applying for a TA Award detailing the terms of their partnership to establish or maintain a small dollar loan program.	PDF in AMIS	Required only for: (1) a FIDI and a Certified CDFI applying for an LLR Award; and (2) two or more Certified CDFIs that are applying as a partnership for a TA Award.

* This requirement also applies tp Applicants' prospective sub-recipients that are not direct beneficiaries of federal financial assistance (e.g., Depository Institutions Holding Company and their Subsidiary Depository Institutions).

The CDFI Fund has a sequential, two-step process that requires the submission of Application documents in separate systems and on separate deadlines. The SF–424 form must be submitted through *Grants.gov,* and all other Application documents through the AMIS portal. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved by the CDFI Fund. The separate Application deadlines for the SF–424 and all other Application materials are listed in tables 1 and 6. Only the Authorized Representative for the Organization or Application Point of Contact designated in AMIS may submit the Application through AMIS.

Applicants are strongly encouraged to submit the SF–424 as early as possible through *Grants.gov* in order to provide sufficient time to resolve any potential submission issues. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process, as the CDFI Fund does not administer the *Grants.gov* system.

The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible,

as it may take several weeks to complete (refer to the following link: *http://www.grants.gov/web/grants/register.html*). An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. If an Applicant has not previously registered with *Grants.gov,* it must first successfully register in *SAM.gov,* as described in Section IV.D below.

C. Unique Entity Identifier: The Unique Entity Identifier (UEI) has replaced the Dun and Bradstreet Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the federal government. This transition allows the federal government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov;* this includes inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

D. System for Award Management: Any entity applying for federal grants or other forms of federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application materials through that platform. When accessing *SAM.gov,* users will be asked to create a *login.gov* user account (if they do not already have one). Registration in SAM is required as part of the *Grants.gov* registration process. Going forward, users will use their *login.gov* username and password every time when logging into *SAM.gov.* The SAM registration process can take four weeks or longer to complete so Applicants are strongly encouraged to begin the registration process upon publication of this NOFA in order to avoid potential Application submission issues. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI number is required by SAM and must be mailed to the Federal Service Desk. This requirement is applicable to new entities registering in SAM or on existing registrations where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter.

Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are required to maintain a current and active SAM account at all times during which it has an active federal award or an Application under consideration for an award by a federal awarding agency.

The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Application by the Application deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes, as the CDFI Fund does not maintain this system. For more information about SAM, please visit *https://www.sam.gov* or call 866–606–8220.

TABLE 7—Grants.gov REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Register in *SAM.gov*	System for Award Management (SAM). This step will include obtaining a UEI.	Four Weeks.*
Register in *Grants.gov*	*Grants.gov*	One Week.**

* Applicants are advised that the stated duration are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI number, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI number, an EIN number, and is already registered in *SAM.gov.*

E. Submission Dates and Times:

1. Submission Deadlines: Table 8 lists the deadlines for submission of the documents related to the FY 2024 SDL Program Funding Round:

TABLE 8—FY 2024 SDL PROGRAM DEADLINES FOR APPLICANTS

Document	Deadline	Time—eastern time (ET)	Submission method
Submit SF–424 Mandatory form	November 20, 2023.	11:59 p.m.	Electronically via *Grants.gov*.
Create AMIS Account (if the Applicant does not already have one).	November 20, 2023.	11:59 p.m.	Electronically via AMIS.
Submit Title VI Compliance Worksheet (all Applicants*)	December 20, 2023.	5:00 p.m.	Electronically via AMIS.
Submit SDL Program Application and Required Attachments	December 20, 2023.	5:00 p.m.	Electronically via AMIS.

* This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of federal financial assistance (*e.g.,* Depository Institutions Holding Company and their Subsidiary Depository Institutions).

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424 Mandatory Form through the *Grants.gov* system under the FY 2024 SDL Program Funding Opportunity Number (listed at the beginning of this NOFA). All other required Application materials must be submitted through AMIS. Application materials submitted through each system are due by the applicable deadline listed in table 8. Applicants must submit the SF–424 by an earlier deadline than that of the other required Application materials in AMIS. If a valid SF–424 is not submitted through *Grants.gov* by the corresponding deadline, the Applicant

will not be able to submit the additional Application materials in AMIS, and the Application will be deemed ineligible. Thus, Applicants are strongly encouraged to submit the SF–424 as early as possible in the *Grants.gov* portal, given that potential submission issues may impact the ability to submit a complete Application.

(a) *Grants.gov* Submission Information: Each Applicant will receive an initial email from *Grants.gov* immediately after submitting the SF–424, confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within forty-eight (48) hours, the Applicant will receive a second email which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by checking *Grants.gov* directly. The Application materials submitted in AMIS are not accepted by the CDFI Fund until *Grants.gov* has validated the SF–424. In the *Grants.gov* Workspace function, please note that the Application package has not been submitted if you have not received a tracking number.

(b) AMIS Submission Information: AMIS is a web-based portal where Applicants will directly enter their Application information and upload required attachments listed in table 6. Each Applicant must register as an organization in AMIS in order to submit the required Application materials through this portal. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the Application deadline. Applicants can only submit one Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple AMIS Application submissions.

Prior to submission, each Application in AMIS must be signed by an Authorized Representative. An Authorized Representative is an employee or officer and has the authority to legally bind and make representations on behalf of the Applicant; consultants working on behalf of the Applicant cannot be designated as Authorized Representatives. The Applicant may include consultants as Application point(s) of contact, who will be included on any communication regarding the Application and will be able to submit the Application but cannot sign the Application. The Authorized Representative and/or Application point(s) of contact must be included as ''Contacts'' in the Applicant's AMIS account. The Authorized Representative must also be a ''user'' in AMIS. An Applicant that fails to properly register and update its AMIS account may miss important communications from the CDFI Fund or fail to submit an Application successfully. Only an Authorized Representative for the organization or an Application point of contact can submit the Application in AMIS. After submitting its Application, the Applicant will not be permitted to revise or modify its Application in any way or attempt to negotiate the terms of an Award.

3. Multiple Application Submissions: Applicants are only permitted to submit one complete Application. However, the CDFI Fund does not administer *Grants.gov,* which does allow for multiple submissions of the SF–424. If an Applicant submits multiple SF–424 Applications in *Grants.gov,* the CDFI Fund will only review the SF–424 Application submitted in *Grants.gov* that is attached to the AMIS Application. Applicants can only submit one Application through AMIS.

4. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an SF–424 submitted after the applicable *Grants.gov,* an AMIS Application submitted after the AMIS Application deadline, or an Application from an Applicant that failed to create an AMIS account by the deadlines specified in table 1 and table 8, or if an Applicant* did not submit the required Title VI Compliance Worksheet by the Application deadline listed in table 1 and table 8, except where the submission delay was a direct result of a federal government administrative or federal government technological error. This exception includes any errors associated with *Grants.gov, SAM.gov,* AMIS, or any other applicable government system. In cases that are not the direct result of a federal government administrative or federal government technological error, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, the Application, or creating an AMIS account, or precluding an Applicant* from submitting the Title VI Compliance Worksheet by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. The CDFI Fund will not consider the late submission of the SF–424, the Application, the Title VI Compliance worksheet, or the late creation of an AMIS account that was a direct result of a delay in a federal government process, unless such delay was the result of a federal government administrative or technological error.

(a) *Creation of AMIS Account:* In cases where a federal government administrative or technological error directly precluded an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants* must submit such request via an AMIS Service Request with a subject line of ''SDL Program—AMIS Account Creation Deadline Extension Request.''

(b) *SF–424 Late Submission:* In cases where a federal government administrative or federal government technological error directly resulted in the late submission of the SF–424, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS service request to the SDL Program with a subject line of ''SDL Program—Late SF–424 Submission Request.''

(c) Title VI Compliance Worksheet Late Submission: In cases where a federal government administrative or technological error directly precluded an Applicant * from submitting the Title VI Compliance Worksheet by the required deadline, the Applicant must submit a written request for approval to

submit the Worksheet after the deadline, and include documentation of the error, no later than two business days after the Title VI Compliance Worksheet submission deadline. The CDFI Fund will not respond to requests for submitting a Title VI Compliance Worksheet after that time. Applicants * must submit such request via an AMIS Service Request to the SDL Program with a subject line of ''SDL Program—Title VI Compliance Worksheet Deadline Extension Request.''

(d) *AMIS Application Late Submission:* In cases where a federal government administrative or federal government technological error directly resulted in a late submission of the Application in AMIS, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late AMIS Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS service request to the SDL Program with a subject line of ''SDL Program—Late Application Submission Request.''

5. Intergovernmental Review: Not Applicable.

6. Funding Restrictions: SDL Program Awards are limited by the following:

(a) A Recipient shall use SDL Program Award funds only for the eligible activities set forth in the Application and as described in Section II.B and Section II.D of this NOFA and its Assistance Agreement.

(b) A Recipient may not disburse SDL Program Award funds to an Affiliate, Subsidiary, or any other entity in any manner that would create a Subrecipient relationship (as defined in the Uniform Requirements) without the CDFI Fund's prior written approval.

(c) SDL Program Award dollars shall only be paid to the Recipient.

(d) The CDFI Fund, in its sole discretion, may pay SDL Program Awards in amounts, or under terms and conditions, which are different from those requested by an Applicant. However, the CDFI Fund will not grant an Award in excess of the amount requested by the Applicant.

V. Application Review Information

A. Criteria: All complete and eligible Applications will be reviewed in accordance with the criteria and procedures described in this NOFA, the Application guidance, and the Uniform Requirements. As part of the review process, the CDFI Fund reserves the right to contact the Applicant by telephone, email, mail, or through an on-site visit for the sole purpose of clarifying or confirming Application information at any point during the review process. The CDFI Fund reserves the right to collect such additional information from Applicants as it deems appropriate. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or its Application may be rejected. The CDFI Fund will review the SDL Program Applications in accordance with the process below. All CDFI Fund reviewers will complete the CDFI Fund's conflict of interest process.

B. Review and Selection Process:

The CDFI Fund will evaluate each complete and eligible Application using the multi-phase review process described in this Section. Where appropriate, the CDFI Fund will use different criteria in order to evaluate the financial health, capacity, and strategies of the Applications based on the proposed use(s) of the SDL Program Award. These differences are noted in the following sections and the Application Instructions. Applicants that meet the minimum criteria will advance to the next step in the review process.

1. Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

2. Financial Analysis and Compliance Risk Evaluation:

i. Financial Analysis: For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in table 5, each Regulated Institution SDL Program Applicant must have a CAMELS/CAMEL rating of a ''1'', ''2'', or ''3'', and no material concerns from its regulator.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using the Application Assessment Tool and the financial information provided by the Applicant. For the Financial Analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to the Business Strategy and Community Impact Review phase. CDFI Fund staff will review and confirm the scores for Applications that receive an initial Total Financial Composite Score of four (4) or five (5). If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to the Business Strategy and Community Impact Review phase and will not receive further consideration for an Award.

ii. Compliance Risk Evaluation: For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application, as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the Applicant's PG&Ms for all CDFI Fund awards. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. CDFI Fund staff will review and confirm the scores for Applications that receive an initial Total Compliance Composite Score of four (4) or five (5). If the Applicant is deemed a high compliance risk after CDFI Fund Staff review, the Applicant will not advance to the Business Strategy and Community Impact Review phase and will not receive further consideration for an award.

3. Business Strategy and Community Impact Review: Applicants that proceed to this phase will be evaluated on the soundness of their proposed business strategy and community impact. Applicants will receive a Total Business Strategy and Community Impact Review Score equivalent to ''Low Risk'', ''Medium Risk'' or ''High Risk.'' Applicants must receive a Total Business Strategy and Community Impact Review Score that is equivalent to a ''Low Risk'' or ''Medium Risk'' to move forward to the Final Award Decision and Award Amount Determination Stage. Applicants that receive an overall rating of ''High Risk'' in this Review will not move forward to the Final Award Decision and Award Amount Determination Stage and will not receive further consideration for an SDL Program Award.

In the Business Strategy and Community Impact section, the CDFI Fund will review and evaluate: (i) the needs of communities and persons in the areas the Applicant proposes to serve with an SDL Program Award and the extent to which the proposed strategy addresses these needs; (ii) the

* This requirement also applies to Applicant's prospective sub-recipients that are not direct beneficiaries of federal finanacial assisntance (*e.g.,*) Depository Institutions Holding Company and their Subsidiary Depository Institutions).

small dollar lending and financing gaps addressed by its business strategy; (iii) the projected SDL Program activities and track record; (iv) the role the SDL Program Award plays in its financing strategy and the expected community impact that will be sought as a result of the proposed program. Expected community impacts may include improved financial strength and stability for low-income and underserved people and/or improved borrower delinquency rate and/or improved credit history and credit scores and/or access to mainstream financial products and expanded activity in other credit facilities (*e.g.,* borrower received an auto loan) and/or continued access to financial education, including credit counseling and/or help to create or preserve savings and/or help borrowers consolidate or reduce debt at a lower cost.

A. For the Applicant requesting an Award for LLR, the Applicant will discuss how the LLR will be used to launch a small dollar loan program or increase the volume of its existing small dollar program that meets the statutory and other requirements described in this NOFA. The Applicant will also describe its strategy and structure of the LLR account. Further, the Applicant will discuss the anticipated loss rate that these reserves will cover and how this was estimated.

b. For the Applicant applying for a TA Award, the Applicant will describe the strategy for how a TA Award will be used to launch a small dollar loan program or increase the volume of its existing small dollar program that meets the statutory and other requirements described in this NOFA. The Applicant will include information about intended uses, such as: technology support, including software and peripherals and/or staff support, including salary and training and/or credit monitoring and reporting capability and/or marketing or promotional support and/or fees for consultants and/or audit or oversight costs.

Within the Business and Community Impact Strategy Section, an Applicant will generally be deemed a lower risk to the extent that it: (i) clearly aligns its proposed SDL Program Award activities and products with the small dollar needs and financing gaps it identifies; (ii) demonstrates that its strategy and activities will result in more favorable financing rates and terms for borrowers; (iii) demonstrates that its projected activities are achievable based on the Applicant's strategy and track record and demonstrates an increase in its small dollar lending; (iv) describes a clear process for selecting borrowers that have a clear need for its small dollar loan program financing; and (v) has a credible pipeline of borrowers. An Applicant will generally score more favorably to the extent it has a volume of projected activities supported by its track record. An Applicant will also score favorably if its small dollar loan program offers one or more of the following lending practices and loan characteristics that promote affordable and responsible small dollar lending and clearly address the identified financing gaps: the loan term is at least ninety (90) days, and/or it considers the borrower's ability to repay by assessing both the borrower's income and expenses (*i.e.,* base lending on a borrower's ability to repay according to the terms of the loan, while meeting other expenses, without needing to refinance/re-borrow, and without relying on collateral), and/or loan decisions are made within one business day (twenty-four (24) hours) after receipt of required documents, and/or the borrower receives a reduction in its loan rate if s/he uses automatic debit payments, and/or the Applicant's small dollar loan program offers automatic savings features, and/or the Applicant offers access to financial education, including credit counseling.

4. Final Award Decision and Award Amount Determination:

During this last phase, the CDFI Fund will review all SDL Program Applications that make it to this step to ensure adherence with the SDL Program's policies and procedures, as well as applicable federal regulations. The CDFI Fund will also review the Applicant's management team and key staff, compliance status, eligibility, due diligence, and regulatory matters. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing federal awards (including timeliness of reporting and compliance), audit or regulator findings, and the Applicant's ability to effectively implement federal requirements. For Applicants applying for awards to establish a small dollar loan program, the CDFI Fund will also consider the Applicant's ability to start a new small dollar loan program. If an Applicant is found to be a significant risk as a result of the due diligence review, the CDFI Fund may eliminate the Applicant from consideration for an SDL Program Award.

The CDFI Fund will determine award amounts for Applications based on the due diligence performed, the Applicant's requested amount, and certain other factors, including but not limited to, the Applicant's three-year projected total small dollar loans to be closed, minimum award size, Applicants that offer one or more of the preferred lending practices and loan characteristics stated in this NOFA that promotes affordable and responsible small dollar lending, Applicants headquartered in PPCs (as stated in the Applicant's Application), an Applicant's risk rating level, and funding availability. Award amounts may be reduced from the requested award amount as a result of the above factors.

5. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

6. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Applicants which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

C. Anticipated Award Announcement: The CDFI Fund anticipates making the SDL Program Award announcement before September 30, 2024. However, the anticipated award announcement date is subject to change without notice.

D. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that

the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive notification from the CDFI Fund stating that its Application has been approved for an Award. Each Applicant not selected for an Award will receive notification and be provided a debriefing document in its AMIS account.

B. Administrative and Policy Requirements Prior to Entering into an Assistance Agreement: The CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the Award or take other actions as it deems appropriate if, prior to entering into an Assistance Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects the Recipient's eligibility for an Award; adversely affects the CDFI Fund's evaluation of the Application; adversely affects the Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Recipient's part, including mismanagement of another federal award.

The CDFI Fund reserves the right, in its sole discretion, to rescind an Award if the Recipient fails to return the Assistance Agreement, signed by an Authorized Representative of the Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

If the Recipient, through merger or similar transaction, ceases to exist as a legal entity, the CDFI Fund may terminate and rescind the Assistance Agreement and the Award made under this NOFA.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the Award made under this NOFA for any criteria described in table 9:

TABLE 9—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements	• If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a payment of SDL Program Award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements.
Failure to maintain CDFI Certification (if applicable).	• A Recipient must be a Certified CDFI as is defined in the SDL Program Application and this NOFA, prior to entering into an Assistance Agreement. • If, at any time prior to entering into an Assistance Agreement under this NOFA, a Recipient that is a Certified CDFI has submitted reports (or failed to submit an annual certification report as instructed by the CDFI Fund) to the CDFI Fund that demonstrate noncompliance with the requirements for certification, but the CDFI Fund has yet to make a final determination regarding whether or not the entity is Certified, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of SDL Program Award, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. • If the Recipient is unable to satisfactorily resolve the compliance issues, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA.
Pending resolution of noncompliance	• The CDFI Fund will delay entering into an Assistance Agreement with a prior Recipient or allocatee that has pending noncompliance or default issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee. • If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA.

TABLE 9—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Default or Noncompliance status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient (or an Affiliate of the Recipient) that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program is noncompliant or found in default with any previously executed CDFI Fund award or Assistance agreement(s) and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may, in its sole discretion, delay entering into an Assistance Agreement with Recipient until the Recipient has cured the noncompliance or default by taking actions the CDFI Fund has specified in writing within such specified timeframe. If the prior Recipient or allocatee is unable to cure the noncompliance or default within the specified timeframe, the CDFI Fund may modify or rescind all or a portion of the SDL Program Award made under this NOFA.
Compliance with federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Assistance Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Assistance Agreement and the Award made under this NOFA. The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the Title VI noncompliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Do Not Pay	• The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) is determined to be ineligible based on data in the Do Not Pay database. • The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government.
Safety and soundness	• If it is determined that the Recipient is or will be incapable of meeting its SDL Program Award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Assistance Agreement.

C. Assistance Agreement: Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to become a Recipient and receive Payment. Each SDL Program Assistance Agreement has a three-year Period of Performance.

1. The Assistance Agreement will set forth certain required terms and conditions of the SDL Program Award, which will include, but not be limited to:

(a) The amount of the Award;

(b) The approved uses of the Award;

(c) Performance goals and measures; and

(d) Reporting requirements for all Recipients.

2. Prior to executing the Assistance Agreement, the CDFI Fund may, in its discretion, allow Recipients to request changes to certain performance goals and measures. The CDFI Fund, in its sole determination, may approve or reject these requested changes or propose other modifications, including a reduction in the Award amount. The CDFI Fund will only approve performance goals and measures if it determines that such requested changes do not undermine the competitive process upon which the SDL Program Award determination was made. Any modifications agreed upon prior to the execution of the Assistance Agreement will become a condition of the Award.

3. If the Recipient fails to comply substantially with the Assistance Agreement, the CDFI Fund may take actions including, but not limited to, the following:

(a) require changes in the Recipient's Performance Goals;

(b) revoke approval of the Recipient's Application;

(c) revoke approval of any other applications submitted to the CDFI Fund by the Recipient under any of the CDFI Fund's programs, and declare such applications to be ineligible;

(d) reduce or terminate the SDL Program Assistance authorized hereunder;

(e) require repayment of any SDL Program Assistance that has been paid to the Recipient pursuant thereto;

(f) render the Recipient ineligible to apply for additional awards from the CDFI Fund through future funding rounds;

(g) require the Recipient to convene a meeting(s) of its board of directors at which meeting(s) the CDFI Fund will be given the opportunity to address the attendees with respect to the CDFI Fund's evaluations and concerns regarding the performance of the Recipient under the Assistance Agreement; or

(h) take such other actions as the CDFI Fund deems appropriate including, but not limited to, termination of CDFI Certification.

4. In addition to entering into an Assistance Agreement, each Applicant selected to receive an SDL Program Award must furnish to the CDFI Fund a certificate of good standing from the jurisdiction in which it was formed. The CDFI Fund may, in its sole discretion, also require the Applicant to furnish an opinion from its legal counsel, the content of which may be further specified in the Assistance Agreement, and which, among other matters, opines that:

(a) The Recipient is duly formed and in good standing in the jurisdiction in

which it was formed and the jurisdiction(s) in which it transacts business;

(b) The Recipient has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein;

(c) The Recipient has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement;

(d) The Recipient is not in default of its articles of incorporation or formation, bylaws or operating agreements, other organizational or establishing documents, or any agreements with the federal government; and

D. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the SDL Program Application has been assigned the following control number: 1559–0036.

E. Reporting: The CDFI Fund will require each Recipient that receives an SDL Program Award through this NOFA to account for and report to the CDFI Fund on the use of the SDL Program Award. This will require Recipients to establish administrative controls, subject to the Uniform Requirements and other applicable OMB guidance. The CDFI Fund will collect information from each such Recipient on its use of the SDL Program Award annually following Payment and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an annual report with the components listed in table 10:

TABLE 10—REPORTING REQUIREMENTS

Criteria	Description
Single Audit (if applicable)	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (2 CFR 200.500) if it expends $750,000 or more in federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR subpart F—Audit Requirements in the Uniform Requirements) and optionally through AMIS.
Financial Statement Audit	For-profit and non-profit Recipients must submit a Financial Statement Audit (FSA) report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Federal Financial Report/OMB Standard Form 425.	Recipient must submit the SF–425 Federal Financial Report to disclose how much of the SDL Program Award funds were expended during the federal government's fiscal year of October 1 through September 30. Form of Submission: Recipient's AMIS account.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its SDL Program grant through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the SDL Program grant, the Depository Institution Holding Company must submit a Uses of Award Report.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its SDL Program grant through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the SDL Program grant, the Depository Institution Holding Company must submit a Performance Progress Report.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of homes and other properties in AMIS, Applicants should *not* include the following PII for the individuals who received the financial products or services in AMIS or in the supporting documentation: name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number or other similarly identifying information. All PII should be redacted from all supporting documentation (if applicable).

Each Recipient is responsible for the timely and complete submission of the applicable reporting requirements. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the SDL Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

F. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with federal statutes, regulations, and the terms and conditions of the SDL Program Award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with the federal statutes, regulations, and the terms and conditions of the SDL Program Award and the Assistance Agreement.

The cost principles used by Recipients must be consistent with federal cost principles; must support the accumulation of costs as required by the principles; and must provide for adequate documentation to support

costs charged to the SDL Program Award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes and regulations, the Assistance Agreement, and related guidance; evaluate and monitor compliance; take appropriate corrective action when not in compliance; and safeguard PII.

VII. Agency Contacts

A. Availability: The CDFI Fund will respond to questions and provide support concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA until the date and time specified in table 1. The CDFI Fund will not respond to questions or provide support concerning this NOFA and the Application that are received after 5:00 p.m. ET on said date, until after the Application deadline.

B. The CDFI Fund's contact information is listed in Table 11:

TABLE 11—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
SDL Program	Submit a Service Request in AMIS	202–653–0421	*sdlp@cdfi.treas.gov.*
CDFI Certification	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	Submit a Service Request in AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

The preferred method of contact is to submit a Service Request within AMIS. For an SDL Program Application question, select ''Small Dollar Loan Program'' for the program. For a CDFI Certification question, select ''Certification.'' For a Compliance question, select ''Compliance & Reporting.'' For Information Technology, select ''Technical Issues.'' Failure to select the appropriate program for the Service Request could result in delays in responding to your question.

C. Communication with the CDFI Fund: The CDFI Fund will use AMIS to communicate with Applicants and Recipients, using the contact information maintained in their respective AMIS accounts. Therefore, the Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact persons and Authorized Representatives, email addresses, fax numbers, phone numbers, and office addresses) in its AMIS account(s). For more information about AMIS please see the Help documents posted at *https://amis.cdfifund.gov/s/Training.*

D. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of because of race, color, national origin, age, sex, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the federal award in a manner to ensure that federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, federal law, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Reasonable Accommodations: Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Jay Santiago, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *SantiagoJ@cdfi.treas.gov* no later than 72 hours in advance of the Application deadline.

B. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the SDL Program CDFI Fund IT support will be available until 5:00 p.m. ET on the date of the Application deadline specified in table 1. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov/sdlp.* The CDFI Fund will post on its website responses to questions of general applicability regarding the SDL Program.

B. The CDFI Fund's contact information is listed in Table 11:

TABLE 11—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
SDL Program	Submit a Service Request in AMIS	202–653–0421	*sdlp@cdfi.treas.gov.*
CDFI Certification	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	Submit a Service Request in AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

The preferred method of contact is to submit a Service Request within AMIS. For an SDL Program Application question, select ''Small Dollar Loan Program'' for the program. For a CDFI Certification question, select ''Certification.'' For a Compliance question, select ''Compliance & Reporting.'' For Information Technology, select ''Technical Issues.'' Failure to select the appropriate program for the Service Request could result in delays in responding to your question.

C. Communication with the CDFI Fund: The CDFI Fund will use AMIS to communicate with Applicants and Recipients, using the contact information maintained in their respective AMIS accounts. Therefore, the Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact persons and Authorized Representatives, email addresses, fax numbers, phone numbers, and office addresses) in its AMIS account(s). For more information about AMIS please see the Help documents posted at *https://amis.cdfifund.gov/s/Training.*

D. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of because of race, color, national origin, age, sex, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the federal award in a manner to ensure that federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, federal law, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Reasonable Accommodations: Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Jay Santiago, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *SantiagoJ@cdfi.treas.gov* no later than 72 hours in advance of the Application deadline.

B. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the SDL Program funding Application has been assigned the following control number: 1559–0051.

C. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

(Authority: Pub. L. 111–203. 12 U.S.C. 4719, 12 CFR part 1805, 12 CFR part 1815, 12 U.S.C. 4502)

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–23503 Filed 10–24–23; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S.

persons are generally prohibited from engaging in transactions with them.

DATES: October 20, 2023.

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 Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On October 20, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. DODIK, Igor, Bosnia and Herzegovina; DOB 25 Jan 1989; POB Banja Luka, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS–EO14033] (Linked To: DODIK, Milorad).

Designated pursuant to Section 1(a)(vi) of Executive Order 14033 of June 8, 2021, ''Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans'' (E.O. 14033), 86 FR 31079 (June 10, 2021), 3 CFR 2021 Comp., p. 591, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Milorad Dodik, a person whose property and interests in property are blocked pursuant to E.O. 14033.

2. DODIK, Gorica, Bosnia and Herzegovina; DOB 30 Sep 1982; POB Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Female (individual) [BALKANS–EO14033] (Linked To: DODIK, Milorad).

Designated pursuant to Section 1(a)(vi) of E.O. 14033 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Milorad Dodik, a person whose property and interests in property are blocked pursuant to E.O. 14033.

Entities

3. GLOBAL LIBERTY D.O.O. LAKTASI (a.k.a. DRUSTVO SA OGRANICENOM ODGOVORNOSCU GLOBAL LIBERTY LAKTASI; a.k.a. GLOBAL LIBERTY D.O.O.), Gradiska cesta 57, Laktasi 78250, Bosnia and Herzegovina; Tax ID No. 4403756190000 (Bosnia and Herzegovina); Business Registration Number 57–01–0286–14 (Bosnia and Herzegovina) [BALKANS–EO14033] (Linked To: DODIK, Igor; Linked To: DODIK, Gorica).

Designated pursuant to Section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor Dodik and Gorica Dodik, persons whose property and interests in property are blocked pursuant to E.O. 14033.

4. FRUIT ECO D.O.O. GRADISKA (a.k.a. DRUSTVO SA OGRANICENOM ODGOVORNOSCU ZA PROIZVODNJU I PROMET VOCA I POVRCA FRUIT ECO D.O.O. GORNJI PODGRADCI, GRADISKA; a.k.a. FRUIT ECO D.O.O.), Gornji Podgradci BB, Gradiska 78400, Bosnia and Herzegovina; Tax ID No. 4402717080004 (Bosnia and Herzegovina); Business Registration Number 1–16289–00 (Bosnia and Herzegovina) [BALKANS–EO14033] (Linked To: DODIK, Igor).

Designated pursuant to Section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor Dodik, a person whose property and interests in property are blocked pursuant to E.O. 14033.

5. AGRO VOCE D.O.O. LAKTASI (a.k.a. AGRO VOCE D.O.O.; a.k.a. AGRO VOCE D.O.O. ZA VOCARSTVO PROIZVODNJU I TRGOVINU LAKTASI), Aleksandrovac BB, Laktasi 78250, Bosnia and Herzegovina; Tax ID No. 4402836840009 (Bosnia and Herzegovina); Business Registration Number 1–16884–00 (Bosnia and Herzegovina) [BALKANS–EO14033] (Linked To: DODIK, Gorica).

Designated pursuant to Section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Gorica Dodik, a person whose property and interests in property are blocked pursuant to E.O. 14033.

6. AGAPE GORICA DODIK I IVANA DODIK S.P. BANJA LUKA (a.k.a. RESTORAN AGAPE GORICA DODIK I IVANA DODIK S.P. BANJA LUKA), Trg Krajine 2, Banja Luka 78000, Bosnia and Herzegovina; Tax ID No. 4510153630006 (Bosnia and Herzegovina) [BALKANS–EO14033] (Linked To: DODIK, Gorica).

Designated pursuant to Section 1(a)(vii) of E.O. 14033 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Gorica Dodik, a person whose property and interests in property are blocked pursuant to E.O. 14033.

Dated: October 20, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–23567 Filed 10–24–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that are being removed from the Specially Designated Nationals and Blocked Person List (SDN List).

DATES: The unblocking of property and interests in property and the removal of the individual identified in this Notice from the SDN List is effective on the date of publication in the **Federal Register**.

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 Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website *(https://www.treasury.gov/ofac)*.

Notice of OFAC Actions

On May 28, 2003, the individual listed below was included in the Annex to Executive Order 13304 of May 28, 2003, ''Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001'' and added to the SDN List. On October 20, 2023 OFAC determined that an insufficient basis exists to retain the following individual on the SDN List under this authority, and this individual should be removed from the SDN List.

Individuals

1. KARADZIC, Aleksandar (a.k.a. ''SASA''); DOB 14 May 1973; POB Sarejevo, Bosnia-Herzegovina (individual) [BALKANS].

Dated: October 20, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23565 Filed 10–24–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: 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 Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 31, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. VISKOVIC, Radovan (Cyrillic: ВИШКОВИЋ, Радован), Bosnia and Herzegovina; DOB 01 Feb 1964; POB Milici, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(iii) of Executive Order 14033 of June 8, 2021, "Blocking Property and Suspending Entry into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans" (E.O. 14033), 86 FR 31079 (June 10, 2021), 3 CFR 2021 Comp., p. 591, for being responsible for or complicit in, or having directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals.

2. STEVANDIC, Nenad (Cyrillic: СТЕВАНДИЋ, Ненад), Banja Luka, Bosnia and Herzegovina; DOB 12 Oct 1966; POB Drvar, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(iii) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations

Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals.

3. CVIJANOVIC, Zeljka (Cyrillic: ЦВИЈАНОВИЋ, Жељка), Banja Luka, Bosnia and Herzegovina; DOB 04 Mar 1967; POB Teslic, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Female (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(iii) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals.

4. BUKEJLOVIC, Milos (Cyrillic: БУКЕЈЛОВИЋ, Милош), Banja Luka, Bosnia and Herzegovina; DOB 21 Mar 1989; POB Doboj, Bosnia and Herzegovina; nationality Bosnia and Herzegovina; Gender Male (individual) [BALKANS-EO14033].

   Designated pursuant to section 1(a)(iii) of E.O. 14033 for being responsible for or complicit in, or having directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals.

Dated: October 20, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23566 Filed 10–24–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Entry of Taxable Fuel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning entry of taxable fuel.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–1897 or Entry of Taxable Fuel.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Entry of Taxable Fuel.

OMB Number: 1545–1897.

Regulation Project Number: REG–120616–03 (T.D. 9346).

Abstract: The regulation imposes joint and several liabilities on the importer of record for the tax imposed on the entry of taxable fuel into the U.S. and revises definition of ''enterer''.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 225.

Estimated Number of Responses: 1,125 hours.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 281 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–23556 Filed 10–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Disclosure of Returns and Return Information by Other Agencies.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1757–Disclosure of Returns and Return Information by Other Agencies'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Returns and Return Information by Other Agencies.

OMB Number: 1545–1757.

Regulation Project Number: TD 9036.

Abstract: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to re-disclose returns and return information based on a written request and the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Current Actions: There are no changes to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 11.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 11.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–23595 Filed 10–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1384—Taxpayer Statement Regarding Refund'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft, or destruction of a tax refund and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 16,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–23594 Filed 10–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning time and manner of making certain elections under the technical and miscellaneous revenue act of 1988, and the redesignation of certain other temporary elections.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1112–Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: TD 8435.

Abstract: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There are no changes being made to this regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 21,740.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 6,010.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–23596 Filed 10–24–23; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES SENTENCING COMMISSION

Request for Applications; Tribal Issues Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of two upcoming vacancies in the at-large membership of the Tribal Issues Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to the at-large membership of the Tribal Issues Advisory Group to apply. An applicant for membership in the Tribal Issues Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the **ADDRESSES** section below. Application materials should be received by the Commission not later than December 26, 2023.

DATES: Application materials for the at-large membership of the Tribal Issues Advisory Group should be received not later than December 26, 2023.

ADDRESSES: An applicant for the at-large membership of the Tribal Issues Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov.* The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—TIAG Membership.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597. More information about the Tribal Issues Advisory Group is available on the Commission's website at *https://www.ussc.gov/about/who-we-are/advisory-groups.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Tribal Issues Advisory Group is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the Tribal Issues Advisory Group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on federal sentencing issues relating to American Indian and Alaska Native defendants and victims, and to offenses committed in Indian country; (3) to engage in meaningful consultation and outreach with tribes, tribal governments, and tribal organizations regarding federal sentencing issues that have tribal implications; (4) to disseminate information regarding federal sentencing issues to tribes, tribal governments, and tribal organizations; and (5) to perform any other related functions as the Commission requests. The advisory group consists of no more than 9 members, each of whom may serve not more than two consecutive three-year terms. Of those 9 members, not more than 1 shall be a federal judge; 2 shall be from the Executive Branch (one from the United States Department of Justice and one from the United States Department of the Interior); 1 shall be from a federal public defender organization or community defender organization; 1 shall be a tribal court judge; and not more than 4 shall be at-large members.

Members of the Tribal Issues Advisory Group are appointed by the Commission. To be eligible to serve as a member, an individual must have expertise, knowledge and/or experience in the issues considered by the Tribal Issues Advisory Group. The Commission intends that the at-large membership shall include individuals with membership in or experience with tribes, tribal governments, and tribal organizations, appointed in a manner that ensures representation among tribal communities diverse in size, geographic location, and other unique characteristics.

The Commission invites any individual who is eligible to be appointed to the at-large membership of the Tribal Issues Advisory Group to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 2.2(c), 5.4.

Carlton W. Reeves,

Chair.

[FR Doc. 2023–23499 Filed 10–24–23; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0515]

Agency Information Collection Activity: Maintenance of Records

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 26, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0515'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0515'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 36.4317.

Title: Maintenance of Records Under 38 CFR 36.4333.

OMB Control Number: 2900–0515.

Type of Review: Revision of a currently approved collection.

Abstract: VA is submitting this revised information collection in advance of implementing new technology and oversight procedures in which VA will collect from lenders certain loan origination information via a computable electronic format.

The information collected under § 36.4333 is used by VA to ensure lenders and servicers who participate in VA's Loan Guaranty program follow statutory and regulatory requirements, such as those relating to credit information, loan processing requirements, underwriting standards, servicing requirements, and other applicable laws, regulations and policies. VA also uses data collected under this authority to provide annual feedback to lenders, through the Lender Scorecard, on certain loan characteristics such as interest rate, fees and charges, audit results, etc., as compared to the national average of all VA lenders.

Affected Public: Private Sectors.

Estimated Annual Burden: 11,080 hours.

Estimated Average Burden per Respondent: 0.008 hours.

Frequency of Response: 2.9 times.

Estimated Number of Respondents: 1,385,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–23496 Filed 10–24–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,
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Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 734, 736, et al.
Export Controls on Semiconductor Manufacturing Items; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 744, 772, and 774

[Docket No. 231013–0246]

RIN 0694–AJ23

Export Controls on Semiconductor Manufacturing Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: On October 7, 2022, the Bureau of Industry and Security (BIS) released the interim final rule (IFR) ''Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use'' (October 7 IFR), which amended the Export Administration Regulations (EAR) to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. The October 7 IFR also made other EAR changes to ensure appropriate related controls, including on certain ''U.S. person'' activities. This IFR addresses comments received in response to only the part of the October 7 IFR that controls semiconductor manufacturing equipment (SME) and amends the EAR to implement SME controls more effectively and to address ongoing national security concerns.

DATES:

Effective dates: This rule is effective November 17, 2023, except for amendatory instruction 5, which is effective January 1, 2026.

Comment due date: Comments must be received by BIS no later than December 18, 2023.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The *regulations.gov* ID for this rule is: BIS–2023–0016. Please refer to RIN 0694–AJ23 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' Any submissions with file names that do not begin with either a ''BC'' or a ''P'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov.* Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT:

- For general questions, contact Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: *RPD2@bis.doc.gov,* please include ''RIN: 0694–AJ23'' in the subject line.
- For technical questions, contact Carlos Monroy at 202–482–3246 or *Carlos.Monroy@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

A. Introduction

On October 7, 2022, BIS released interim final rule (IFR) ''Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use'' (October 7 IFR) and requested public comments on the newly imposed measures. (87 FR 62186, October 13, 2022) BIS imposed these new controls to protect U.S. national security interests by restricting the People's Republic of China (China's) military modernization efforts and degrading its ability to violate human rights. With a calibrated and measured approach, focused on key, force-multiplying technologies, the October 7 IFR accomplished U.S. national security objectives while interfering with commercial trade no more than necessary to accomplish those objectives.

The advanced computing integrated circuits (ICs), semiconductor manufacturing equipment (SME) essential to producing advanced-node ICs, and items used to further supercomputing capacity controlled through the October 7 IFR are critical for the development of weapons of mass destruction (WMD), advanced weapons systems, exascale supercomputing, and artificial intelligence (AI) capabilities, as well as high-tech surveillance applications. The use of such items in development and deployment of advanced weapons systems and advanced AI to support military applications would further U.S. military adversaries' goals of surpassing the United States and its allies in military capability, thereby destabilizing regional and global security status quos. This includes logic integrated circuits needed for future advanced weapon systems and memory needed for high volume and high-performance data storage in such systems. Additionally, AI capabilities, facilitated by supercomputing and built on advanced-node ICs made by SME, lead to improved speed and accuracy of military decision-making, planning, and logistics. They can also be used for cognitive electronic warfare, radar, signals, intelligence, and jamming. These ongoing national security concerns motivated the October 7 IFR and require the controls set forth in this SME IFR.

The October 7 IFR imposed controls on two sets of items and activities. First, the rule established new Export Control Classification Numbers (ECCNs) and controls for certain advanced computing ICs and computer commodities that contain such ICs, as well as end-use and end-user controls related to ''supercomputers.'' Second, it established a new ECCN and controls for certain SME essential to producing advanced-node ICs, end-use controls related to the ''development'' and ''production'' of those advanced ICs, and end-use controls related to the ''development'' and ''production'' of SME. BIS later imposed the same controls implemented on China in the October 7 IFR to Macau because of Macau's position as a Special Administrative Region of China and the potential risk of diversion of items subject to the EAR from Macau to China. *See* ''Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use Updates to the Controls to Add Macau'' (88 FR 2821, January 18, 2023).

In this rule, BIS updates the SME controls through publication of this SME IFR while publishing elsewhere in this issue of the **Federal Register** a separate IFR, ''Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates to the Controls and Corrections'' (AC/S IFR). Together, these IFRs advance the U.S. national security objectives identified above and discussed more extensively in the chapeau of section C of this rule.

This SME IFR amends the EAR by refining the scope of the October 7 IFR to more effectively achieve national security objectives while responding to public comments about the semiconductor manufacturing and SME controls adopted in the October 7 IFR. This SME IFR: (1) includes additional types of SME to those previously described under ECCN 3B090 and controls all such items under ECCNs 3B001 and 3B002; (2) revises ECCNs 3D001, 3D002, 3D003, and 3E001 to make conforming changes for the license requirements for the items moved from ECCN 3B090 to ECCNs 3B001 and 3B002; (3) revises the license exception restrictions to reflect the removal of 3B090 and makes other changes related to the availability of license exceptions for these SME items; (4) revises the national security license requirements and review policy to impose national security controls on newly added SME and those items moved from ECCN 3B090 to ECCNs 3B001 and 3B002 for Macau and destinations specified in Country Group D:5; (5) revises the regional stability license requirements and license review policy to, among other things, remove references to ECCN 3B090 and expand the license requirement to Macau and destinations specified in Country Group D:5; (6) revises the *de minimis* provisions to add a 0% *de minimis* rule for items described in new ECCN 3B001.f.1.b.2.b; (7) revises and reformats the ''U.S. persons'' activities controls and ''supercomputer'' and semiconductor manufacturing end-use controls to better achieve the objectives of the October 7 IFR and improve clarity; (8) adds two new defined terms to the EAR for ''extreme ultraviolet'' (''EUV'') and ''advanced-node integrated circuits;'' (9) adds a new Temporary General License (TGL) to provide SME producers in the United States and Country Groups A:5 and A:6 countries additional time to identify alternative sources of supply outside of arms-embargoed countries, or to acquire individually validated licenses; and (10) revises license requirements based on destination.

B. Public Comments and BIS's Responses

BIS received 43 responsive public comments in response to the October 7 IFR. This rule summarizes and addresses the comments under 63 topics that were specific to controls related to SMEs and the production of advanced-node ICs. The AC/S IFR, published elsewhere in this issue of the **Federal Register**, summarizes and addresses comments on the advanced computing provisions of the October 7 IFR, as well as general comments applicable to all aspects of the October 7 IFR that are not otherwise addressed in this SME IFR. BIS appreciates the many public comments it received and encourages continued engagement and feedback. This SME rule is published as an IFR with a 60-day comment period and 30-day delayed effective date for most changes for the purpose of gathering valuable public input.

Breadth of the October 7 IFR and Its Unilateral Imposition

Topic 1: Many commenters expressed concern and surprise about the breadth of the October 7 IFR, in some cases arguing that existing multilateral (*i.e.,* the Wassenaar Arrangement) controls were sufficient to address BIS's stated objectives.

BIS Response: BIS understands the importance of predictability and specific focus in export controls, particularly given the complexity and interdependence of the global semiconductor industry. The U.S. Government has frequently and consistently raised its concerns about China's military modernization, particularly in light of China's Military-Civil Fusion (MCF) strategy, which deliberately blurs the lines between commercial sectors and military programs, and the ability of China's government to demand information and assistance from companies. The U.S. Government, including BIS, has been clear that MCF, combined with China's government system, has led to additional U.S. export controls on items including emerging technologies that have military applications. Consistent with this view, BIS has specifically signaled intent during speeches at BIS's 2022 Annual Update Conference and various other public engagements to pursue additional controls in this area to address U.S. national security and foreign policy concerns, including with respect to military modernization and human rights.

Moreover, while some may argue against the breadth of the October 7 IFR controls, in fact BIS sought to use a scalpel approach, seeking to restrict China's military modernization efforts through the narrowest possible restrictions of sensitive technologies without unduly interfering with commercial trade. While items that are the subject of this SME IFR are not yet formally controlled under a multilateral regime, the urgency and criticality of the U.S. national security concerns described herein dictate control pending adoption through the Wassenaar Arrangement.

Topic 2: Many commenters expressed concern about the unilateral nature of new controls in the October 7 IFR. These commenters highlighted the established congressional preference for multilateral controls set forth in the Export Control Reform Act of 2018 (ECRA), urging that BIS should not have acted, and should not act in the future, without first securing multilateral support for any new controls, particularly those related to SME and semiconductor production because foreign available items not subject to U.S. control may undercut the effectiveness of U.S. action. For example, a commenter noted that, in function, new ECCN 3B090 on SME expands existing 3B001 by adding new parameters controlled only to China. Before becoming effective, Wassenaar Arrangement approval of a U.S. proposal should be obtained.

BIS response: BIS continues to work with interagency partners to obtain formal multilateral regime agreement for all new controls, including those imposed in this IFR, consistent with ECRA. There are circumstances, however, consistent with ECRA, in which action pending formal multilateral regime agreement is warranted to protect U.S. national security interests. BIS's imposition of National Security (NS) controls on the items in this SME IFR is consistent with these principles. These controls are being implemented in anticipation of formal multilateral regime adoption.

Topic 3: Many commenters agreed with BIS's objectives but argued that the unilateral controls in the October 7 IFR have already been, and will be, both damaging and ineffective particularly because they encourage foreign companies to ''design out'' or avoid products subject to the EAR. This ''design out'' is to the short- and long-term detriment of U.S.-based companies and their technological leadership within the semiconductor industry. Accordingly, commenters argue the

controls are, or over time will become, ineffective.

BIS response: BIS's goal is to implement effective and focused controls that do not diminish U.S. technology leadership. To this end, BIS's revisions in this SME IFR focus controls on specific capabilities related to military advancement and activities or technologies that enable those capabilities. At the same time, BIS has refined controls to minimize negative consequences including by encouraging replacement of items subject to the EAR with items not subject to the EAR. Among other things, BIS has adopted more nuanced license review policies that account for end use and the replaceability of items subject to control and made available new general authorizations to allied-destination companies to facilitate their transition to the new controls. These steps recognize China's role in the global semiconductor industry and electronics ecosystem. BIS's focus is on the development and production of advanced-node ICs, given their national security implications and China's well-documented MCF policy. Finally, BIS understands and appreciates the significant efforts by global industry to comply with new export controls. Corporate compliance activities are the keystone of effective controls, and BIS reiterates its interest in feedback from the export community. BIS also notes that, when warranted, we will consider requests for expedited review or other forms of authorization, as it did in the days, weeks, and months following the October 7 IFR.

Topic 4: A commenter noted that allies have not imposed similar semiconductor end-use controls on their nationals. This commenter noted that although the Enhanced Proliferation Control Initiative (EPCI) is a decades-old initiative that was the basis for U.S. and allied partner export control authorities to impose licensing obligations for the provision of services and exports involving otherwise uncontrolled items, no ally has similarly informed its citizens that support for advanced-node IC development or production in China could *per se* support the development or production of WMD.

BIS response: BIS has revised the ''U.S. persons'' controls related to SME set forth in § 744.6 to ensure that EPCI controls are calibrated to address the national security concerns described above without unduly undermining the ability of U.S. persons to work for companies headquartered in the United States and closely allied countries. Additional discussion on the changes made to U.S. person controls are discussed in section C.10 of this rule.

Topic 5: A commenter requested that BIS should consider the impact on potential public benefits derived from advanced technologies developed through cross-border cooperation, especially in the realm of global health and environmental issues.

BIS response: BIS has considered this impact and notes that existing licensing policies are designed to be flexible, enabling authorization of certain types of collaboration when warranted, such as to maintain supply chains, assuming the risks of diversion to prohibited end uses are sufficiently mitigated.

Topic 6: A commenter noted that the United States will be hurt by not having access to technology developed in China and the United States may be left behind in the technology race because it will be harder to share information needed for technological development.

BIS response: The EAR controls do not restrict the importation of items from China. However, BIS understands that this commenter likely means that because U.S. companies will be restricted in the types of items they will be able to export, reexport, or transfer to or within China or Macau and the types of end uses or end users they can engage with in China or Macau, it may be more difficult to collaborate with parties in China and Macau. BIS does not seek to disrupt existing supply chains through this rulemaking. These controls are necessary to protect national security and have been tailored in as focused a way as possible to affect this result.

Topic 7: A commenter noted that when some People's Republic of China (PRC) semiconductor foundries buy semiconductor manufacturing equipment, they may (without BIS authorization) resell part or the entire semiconductor production line to an entity that makes military products. The commenter expressed doubt that the U.S. Government would be able to control how the semiconductor equipment will be used after it is shipped to China. It is vital that much stricter controls be implemented.

BIS response: BIS acknowledges that transfers within China or Macau are a concern, but the existing EAR requirements, including the controls imposed in the October 7 IFR, conditions on BIS licenses, and the license requirement imposed by §§ 744.21 and 744.22 for such transfers (in-country), already impose an authorization requirement for these types of transfers. In addition, equipment exporters typically have staff on-site to assist in operating the semiconductor manufacturing equipment. Further, PRC Import Certificates are required for certain licenses, which facilitates U.S. Government oversight in identifying diversion. BIS is continually assessing how these efforts can be strengthened to address this issue of concern.

ECCN 3B090

BIS summarizes below the comments received on ECCN 3B090 and highlights how these comments are addressed in the new controls added in this SME IFR in ECCNs 3B001 and 3B002. Additional discussion of the specific revisions made to ECCNs 3B001 and 3B002 can be found in sections C.1 and C.2 of this rule, respectively. The removal of ECCN 3B090 is discussed in section C.3, and revisions to ECCNs 3D001 and 3E001 are discussed in section C.4.

Topic 8: BIS received various comments on the addition of ECCN 3B090. Some commenters raised concerns over certain commodities that fell under ECCN 3B090 if they believed that there is foreign availability of the same technology. Several commenters highlighted areas in which they thought additional clarifications or changes were needed to the 3B090 control parameters.

BIS response: As a general matter, BIS believes that the revisions made to the Commerce Control List (CCL) in this SME IFR respond to the concerns raised in response to the October 7 IFR for CCL-based controls for semiconductor manufacturing items. This SME IFR removes ECCN 3B090 and makes conforming changes to ECCNs 3B001, 3B002, 3D001, and 3E001, as BIS determined that use of existing ECCNs would facilitate global compliance and enforcement. Because of the removal of ECCN 3B090 and the other changes in the SME CCL-based controls implemented, the comments submitted in response to the October 7 IFR on ECCN 3B090 and related software and technology under ECCNs 3D001 and 3E001 are generally no longer applicable. BIS encourages these commenters to review the SME IFR revisions to the CCL, along with the conforming changes made to other parts of the EAR and submit any additional comments that may be warranted. BIS also encourages public comment on any changes in foreign availability since the October 7 IFR.

Topic 9: A commenter noted that ECCN 3B090.a.1 under-controls the types of equipment at issue and could be available from non-U.S. manufacturers. This commenter also requested BIS add the words ''or electroless'' after ''electroplating'' to ECCN 3B090.a.1. This commenter noted that the control does not refer to

''electroless'' plating, which is an alternative means to enable the selective cobalt process described in ECCN 3B090.a.5. In other words, equipment for depositing an alloy of cobalt through electroless plating is also equipment that is specific to the production of semiconductors at 14 nm nodes or smaller.

BIS response: This SME IFR removes ECCN 3B090.a.1 and adds these items to the new ECCN 3B001.d.1. BIS accepts this commenter's recommendation. BIS has also added a note to ECCN 3B001.d.1 to clarify that this control applies to semiconductor wafer processing equipment, but not necessarily other equipment that may nevertheless be designed for cobalt electroplating or cobalt electroless-plating deposition.

Topic 10: A commenter noted that ECCN 3B090.a.2 applies to tools available outside the United States used to produce mature node semiconductors. This commenter requested BIS remove the words ''or tungsten'' in ECCN 3B090.a.2 or, in the alternative, remove ECCN 3B090.a.2 completely because ECCN 3B090.a.8 covers the same scope of equipment. ECCN 3B090.a.2 controls ''chemical vapor deposition equipment capable of deposition of cobalt or tungsten fill metal having a void/seam having a largest dimension less than or equal to 3 nm in the fill metal using a bottom-up fill process.'' The inclusion of the words ''or tungsten'' in this control appears to be a mistake because equipment capable of chemical vapor deposition of tungsten has been in use for producing semiconductors at the 90nm and larger technology nodes for more than two decades. To fix this apparent error, the words ''or tungsten'' could be removed. Another option would be to remove ECCN 3B090.a.2 because the equipment described in the paragraph are all already within the scope of the tools described in ECCN 3B090.a.8, which describes the equipment for cobalt fill.

BIS response: BIS has removed ECCN 3B090.a.2 and adds related items to ECCN 3B001.d.2. BIS has also revised the scope of the control to provide greater specificity on the types of tungsten-based capabilities subject to control. The new ECCN 3B001.d.2 also includes the phrase ''Equipment designed for'' at the beginning of ECCN 3B001.d.2 and removes the phrase ''capable of'' and adds in its place the phrase ''by performing'' in ECCN 3B001.d.2.a to make the control parameter more precise. BIS encourages commenters that submitted comments on ECCN 3B090 to submit any additional comments they consider relevant.

Topic 11: A commenter noted that ECCN 3B090.a.6 applies to tools available outside the United States used to produce mature node semiconductors. This commenter requested BIS remove ECCN 3B090.a.6 because it is not limited to the production of advanced-node ICs and ECCN 3B090.a.8 already controls the types of equipment apparently intended to be controlled by the ECCN. ECCN 3B090.a.6. controls ''physical vapor deposition equipment capable of depositing a cobalt layer with a thickness of 10 nm or less on a top surface of a copper or cobalt metal interconnect.'' BIS apparently inadvertently worded the control in such a way that it is not limited to equipment specific to the production of advanced-node ICs. That is, the control text is not limited in scope to the production of cobalt interconnects on semiconductors at the 14 nm or smaller technology nodes. Rather, it applies equally to equipment that is widely used to produce mature node ICs (*e.g.,* at the 65 nm technology node) that have been in production for more than a decade.

BIS response: This SME IFR removes ECCN 3B090.a.6 and, unlike other ECCN 3B090 controls, does not re-establish a similar control under ECCN 3B001.d. The objective of former ECCN 3B090 was to focus controls on items used in the production of advanced-node ICs. Based on feedback from industry, including from this commenter, BIS agrees that ECCN 3B090.a.6 did not effectively tailor the scope of control to this objective, and as a result BIS has decided not to re-establish this control at this time.

Topic 12: A commenter requested BIS remove ECCN 3B090.a.7 and add alternative text, which would be clearer and better achieve the intended objectives of the October 7 IFR.

BIS response: This IFR removes ECCN 3B090.a.7 and adds controls on these commodities to ECCN 3B001.d.12. BIS has not adopted this commenter's recommendations but continues to study the controls to ensure appropriate coverage. BIS encourages commenters that submitted comments on ECCN 3B090 to submit any additional comments they consider relevant.

Topic 13: A commenter noted that ECCN 3B090.a.11 applies to tools available outside the United States used to produce mature node semiconductors. This commenter requested BIS revise slightly ECCN 3B090.a.11 so that it is limited in scope to equipment specific to producing advanced-node ICs. Although BIS apparently intended this control to only apply to equipment specific to producing advanced-node ICs, the commenter believes the control is worded in such a way that it also applies to tools that have been used for more than a decade to produce mature node ICs. Instead, the language would need to be slightly revised so that it is focused only on the atomic layer deposited fill process.

BIS response: This SME IFR removes ECCN 3B090.a.11 and adds new controls on these commodities to ECCN 3B001.d.11. BIS has not adopted this commenter's recommendations but continues to study the controls to ensure appropriate coverage. BIS encourages commenters that submitted comments on ECCN 3B090 to submit any additional comments they consider relevant.

SME End-Use Control Under § 744.23(a)(4) (Former § 744.23(a)(1)(v) and (a)(2)(v))

The following is a summary of public comments regarding § 744.23 and BIS's responses thereto. Additional discussion about § 744.23 can be found in section C.11 of this rule.

Topic 14: Many commenters argued that the end-use control set out in § 744.23(a)(2)(v) of the October 7 IFR (and now in § 744.23(a)(4)) is too broad, expressing concern about unintended consequences for the ''development'' and ''production'' of legacy ICs.

BIS response: BIS agrees that this provision is overbroad and has narrowed the product scope to any item subject to the EAR and specified on the CCL. Allowing continued development and production of indigenous SME in China would erode the effectiveness of the end-use controls in § 744.23(a)(2). However, BIS believes that this narrowed scope will capture the parts, components, and accessories for SME that are of greatest concern.

Topic 15: Several commenters expressed concern that the end-use control set out in § 744.23(a)(2)(v) of the October 7 IFR (and now in § 744.23(a)(4)) goes far beyond the advanced production objectives of the October 7 IFR by prohibiting exports of even EAR99 designated items to China for basic semiconductor development and production applications. These commenters warned against cutting off U.S.-based producers of EAR99 items from large segments of the global semiconductor supply chain or risking the loss of long-held supply positions to non-U.S. and producers of raw materials from China.

BIS response: Neither the October 7 IFR nor this SME IFR cut off U.S.-based suppliers of EAR99 items from the global semiconductor supply chain, and BIS disagrees with these commenters' characterization of the scope of these end-use controls. BIS notes that it has narrowed the ''Product Scope'' specified in § 744.23(a)(4) to items subject to the EAR specified on the CCL, and the ''End-Use Scope'' is now narrowed to the ''development'' or ''production'' of certain CCL-listed, Category 3 front-end SME in either Macau or a destination specified in Country Group D:5. This said, the end-use control under § 744.23(a)(4) is not related to the ''development'' or ''production'' of ICs or other semiconductor items. Further, there is no general end-use control on the export, reexport, or transfer (in-country) of EAR99 items to China or Macau when destined only for use in the ''development'' or ''production'' of non-''advanced-node ICs,'' absent other prohibited end uses or end users.

Topic 16: A commenter noted that including ECCN 3B991 significantly broadens the scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)) beyond items only used for semiconductors. This commenter requests BIS to provide clarity as to why the rule should restrict exports of ''parts,'' ''components,'' or ''equipment'' for the development or production of these types of equipment that are not related to semiconductor device manufacturing.

BIS response: BIS disagrees with this commenter's characterization of the controls. Specifically, BIS is not aware of items in ECCN 3B991 that are unrelated to semiconductor device manufacturing. However, BIS welcomes additional comments identifying specific Category 3, Group B ECCNs that are unrelated to semiconductor device manufacturing, and which may warrant consideration for exclusion from § 744.23(a)(4). Also, BIS clarifies in this rule that the product scope of § 744.23(a)(4) covers any items subject to the EAR specified on the CCL (not just ''parts,'' ''components,'' or ''equipment'') when destined for use in the ''development'' or ''production'' of SME specified in the listed ECCNs under § 744.23(a)(4).

Topic 17: A commenter noted that controlling EAR99 materials for use in China's semiconductor industry unnecessarily harms early stages of semiconductor supply chains that feed a wide range of commercial applications. This commenter believes that former § 744.23(a)(1)(v) and (a)(2)(v) do not distinguish between suppliers at different stages of the semiconductor supply chain and treats basic material suppliers equally to advanced IC suppliers, subjecting all to an effective ban on exports to China when for use in Group 3B ECCN equipment.

BIS response: BIS disagrees with the commenter's characterization of these controls. The end-use control under § 744.23(a)(4) (former § 744.23(a)(2)(v)) does not capture items that are merely ''used'' by Group 3B ECCN items, but rather only items used in the ''development'' or ''production'' of specified Group 3B ECCN items. For example, § 744.23(a)(4) would not control the shipment of CCL items to be used in or consumed by 'front-end integrated circuit ''production'' equipment' specified in a Group 3B ECCN in an IC production setting, assuming the equipment is not involved in the ''development'' or ''production'' of ''advanced-node integrated circuits,'' as that term is now defined in § 772.1. Similarly, these sections do not prohibit providing spare parts or materials for 3B ECCN items (again, assuming the 3B items are already ''developed'' or ''produced''). In addition, this rule eases the compliance burden associated with license requirements arising from § 744.23(a)(4) controls by providing a TGL in supplement no. 1 to part 736 for entities headquartered in the United States or in a destination specified in Country Group A:5 or A:6 that are not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5.

Topic 18: A commenter noted that controls are catching items that are purely used for civil applications. This commenter noted that initial processing steps for basic silicon wafers can involve semiconductor production equipment and processes employed for solely commercial applications, such as photovoltaic cells and battery technologies.

BIS response: BIS disagrees with this commenter's characterization of the controls. Section 744.23(a)(2) only controls items destined for the ''development'' or ''production'' of ICs. The controls do not generally capture the ''development'' or ''production'' of photovoltaic cells or battery technologies simply because such activity involves semiconductor production equipment. If the commenter is referring to the ''development'' or ''production'' of basic silicon wafers or ICs (other than ''advanced-node ICs''), including those that are subsequently used in these types of commercial applications (and not any of the end uses described in § 744.23), these items similarly fall outside the scope of § 744.23. If BIS has misunderstood the commenter's characterization, additional comments may be submitted in response to this SME IFR or guidance may be sought directly from BIS, including in the form of an Advisory Opinion request to BIS pursuant to § 748.3(c) for clarification.

Topic 19: A commenter noted that the semiconductor end-use control in § 744.23(a)(4) (former § 744.23(a)(2)(v)) could potentially apply to shipments of U.S.-origin EAR99–designated raw materials to non-U.S. fabricators of parts for Group 3B ECCN equipment, if the non-U.S. fabricator intends to export at least one of its products, which are not otherwise subject to the EAR, to China. The commenter recommends BIS address these circumstances in its revision to the October 7 IFR or in BIS published guidance.

BIS response: This rule narrows the product scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)) to items subject to the EAR and specified on the CCL. Authorization would be required if there is ''knowledge'' at the time of export, reexport, or transfer (in-country) that an item on the CCL will ultimately be used (including by incorporation into another item such as a ''part'' or ''component'') in the ''development'' or ''production'' of specified Group 3B ECCN equipment in Macau or a destination specified in Country Group D:5. This commenter should also review BIS's responses to Topics 42 through 45, below, for additional guidance on the scope of § 744.23(a)(4). Consistent with its response to Topic 43, BIS notes that an export, reexport, or transfer (in-country) of a replacement ''part'' or ''component'' destined for incorporation into Group 3B equipment in Macau or a destination specified in Country Group D:5 that is already ''developed'' and ''produced'' (*e.g.,* finished equipment that is already in operation in an integrated circuit production facility) would not fall within the scope of § 744.23(a)(4) and would need to be analyzed separately under other end-use controls, particularly § 744.23(a)(2).

Topic 20: A commenter requested that BIS limit the scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)) by exempting (1) legacy SME and SME components, (2) exports to companies located in China but headquartered in the United States and allied partners, and (3) exports of items to China intended for incorporation into SME or SME components that will be utilized outside of China.

BIS response: In this rule, BIS has added a TGL in paragraph (d)(1) of supplement no. 1 to part 736, which permits companies headquartered in the United States or in Country Group A:5

or A:6 countries to continue to use suppliers in China and other destinations in Country Group D:5 and Macau, subject to certain conditions. BIS believes this TGL will mitigate or resolve the concerns raised by this commenter. See the discussion in section C.6 of this rule for additional information about this TGL.

Topic 21: A commenter noted that the SME restrictions under § 744.23(a)(4) (former § 744.23(a)(2)(v)) will create a strong incentive for companies operating in China, including those headquartered in the United States and allied partners, to replace U.S.-origin items with non-U.S. alternatives. When U.S.-origin components cannot be designed out, it will create a major incentive for companies to move their supply chains out of China even when U.S. and allied companies are the economic beneficiaries of these supply chains.

BIS response: BIS has established a new TGL in in paragraph (d)(1) of supplement no. 1 to part 736 to permit the activities described by this commenter and mitigate the commenter's concerns. Separately, BIS agrees with the commenter's suggestion that difficulty procuring certain U.S.-origin items may incentivize companies to move supply chains out of China. Separate from release of the October 7 IFR, companies are also analyzing the risks of continued operation in China related to economic coercion and intellectual property theft, among other concerns.

Topic 22: A commenter noted that given lower production costs in China, without modification, the SME restriction under § 744.23(a)(4) (former § 744.23(a)(2)(v)) will result in greater fabrication costs for ''Western'' semiconductor equipment manufacturers and the entire electronics sector in the United States. These costs do not appear to be balanced by a substantial strategic benefit.

BIS response: The national security imperative for the October 7 IFR and this subsequent rulemaking is explained in section C and, with respect to the ''development'' and ''production'' of indigenous SME, immediately below in response to Topic 23. BIS's effort to regulate only the most advanced and important technologies with these rules reflects a focus on national security without interfering with commercial trade any more than necessary to accomplish national security objectives.

Topic 23: Several commenters requested that BIS publish a list of fabs of concern. These commenters noted that to reduce uncertainty around what facilities fall under the scope of the October 7 IFR, BIS should consider publishing a list of fabs manufacturing advanced nodes covered by the October 7 IFR. These comments noted that BIS should publish an affirmative list of ''semiconductor fabrication facilities'' that engage in covered ''development'' or ''production'' of NOT AND (NAND), logic, or dynamic random-access memory (DRAM) integrated circuits. These commenters noted that the Entity List should be used instead of relying on § 744.23 or § 744.6. Several commenters noted that untold hours of due diligence efforts by companies could be eliminated if BIS would simply identify the covered entities. These commenters also noted that the due diligence conclusions reached by one exporter may be different from another, even for the same PRC end user, leading to an unlevel playing field.

BIS response: BIS is aware of, and generally shares, industry's preference that BIS use the Entity List where possible in lieu of end-use controls under § 744.23 or ''U.S. person'' controls under § 744.6. BIS reflected this approach in the October 7 IFR by identifying 28 entities involved in the use of advanced computing items or supercomputers and intends to add additional entities to the Entity List as they are identified and approved by the End-User Review Committee (ERC). The use of the Entity List for this purpose will, like the Military End-User (MEU) List, be non-exhaustive, so exporters, reexporters, and transferors will still need to do their own due diligence when dealing with parties not identified on the Entity List with a footnote 4 designation. This SME IFR does not add any additional entities to the Entity List, but a separate Entity List rule that is on public inspection October 17, 2023, and publishing in the **Federal Register** of October 19, 2023, adds multiple entities that the ERC determined should be added to the Entity List. That rule, ''Entity List Additions,'' adds 13 entities to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization. Specifically, these entities have developed large AI models and AI chips for defense purposes using U.S.-origin items. They are also given a footnote 4 designation, which means that items subject to the EAR, for the purpose of these license requirements, include foreign-produced items that are subject to the EAR pursuant to § 734.9(e)(2) of the EAR. As the ERC identifies and approves additional entities, those entities will be added to the Entity List on a timely basis.

Appropriate Scope of the SME Development and Production End-Use Control for Lower-Level Items

Topic 24: A commenter requests that BIS remove ECCNs controlled only for Anti-Terrorism (AT) reasons, *i.e.,* 3B991 and 3B992, from § 744.23(a)(4) (former § 744.23(a)(2)(v)). The commenter noted that the removal of these AT-only ECCNs will prevent excessive and unnecessary use of unilateral controls and limit the impact of the October 7 IFR on legacy semiconductor manufacturing. The commenter noted that ECCNs 3B991 and 3B992 generally did not require a license to China prior to the October 7 IFR and have utility across the spectrum, including legacy manufacturing nodes.

BIS response: BIS disagrees with the commenter's characterization of the scope of controls. ECCNs 3B991 and 3B992 remain uncontrolled to China generally, and § 744.23 does not impose a license requirement for the export, reexport, or transfer (in-country) of a ECCN 3B991 or 3B992 item to Macau or a destination specified in Country Group D:5 unless the item is destined for one of the end uses specified in § 744.23(a)(1) through (4), such as the ''development'' or ''production'' of integrated circuits at a facility where ''production'' of ''advanced-node integrated circuits'' occurs, or for ''development'' or ''production'' of 'front-end integrated circuit ''production'' equipment,' and ''components,'' ''assemblies,'' and ''accessories'' specified in ECCN 3B001 (except 3B001.g, .h, and .j), 3B002, 3B611, 3B991 (except 3B991.b.2), or 3B992. If an exporter has ''knowledge'' that its 3B991 or 3B992 equipment will be used only at a facility that ''produces'' ICs at a legacy technology node but not ''advanced-node ICs,'' § 744.23(a)(2) does not apply. Furthermore, § 744.23(a)(4) does not restrict the export of ECCN 3B991 and 3B992 items destined for use in the production of ICs. Rather, it only restricts these items (among all other items subject to the EAR and specified on the CCL) destined for use in the ''development'' or ''production'' of other SME (or ''parts'' or ''components'' therefor), which if indigenized would erode the effectiveness of BIS's end-use and list-based controls.

Topic 25: A commenter noted that it is very unlikely restrictions on the development or production of ECCN 3B991 and 3B992 items would ever be adopted by our allies and that these commodities and items used in their development and production are already widely available in China,

which means even if other countries were to add these controls on exports to China, the controls would still be ineffective.

BIS response: Consistent with ECRA, BIS prioritizes engagement with relevant governments to achieve multilateral coordination of controls, including through the Wassenaar Arrangement.

Topic 26: A commenter requests that the SME restriction under § 744.23(a)(4) (former § 744.23(a)(2)(v)) should not apply to the production of legacy SME or SME components. This commenter notes that the production of SME and SME components used for the manufacture of legacy semiconductors devices, which can generally be sent to China without a license under current multilateral and U.S. export controls (notwithstanding the October 7 IFR), can be permitted in China without affecting the ability of the United States to restrict advanced-node IC manufacturing in China.

BIS response: BIS believes that restricting the indigenization of 'front-end integrated circuit ''production'' equipment,' and items on the CCL therefor, is critical for the effectiveness of the end-use controls in § 744.23(a)(2). BIS welcomes additional comments on the scope of § 744.23(a)(4), including the identification of specific SME items (and related ECCNs) that are exclusively used in the manufacture of legacy-node ICs.

Topic 27: A commenter asked for clarification whether BIS intended to include the development or production in China of masks, reticles, and mask substrates within the scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)). This commenter notes that the policy purpose of the rule appears to be focused on limiting the development and production in China of semiconductor production equipment, such as etch, deposition, inspection, and lithography tools. ECCNs 3B001.g, 3B001.h, 3B001.j, and 3B991.b.2, however, refer to various types of masks, reticles, and mask substrate blanks. This commenter notes that while these items are essential in the fabrication of semiconductors, these are not production ''equipment'' in the traditional sense of the word as they are developed in a process that immediately precedes the front-end integrated circuit fabrication process. If BIS did not intend to affect exports for use in producing masks, reticles, or mask substrates, this commenter asks that BIS amend the provision to exclude them from its scope.

BIS response: BIS agrees and has excluded masks and related items from the end-use scope of § 744.23(a)(4). However, BIS notes that end-use control § 744.23(a)(2) could still capture a mask, reticle, or mask substrate excluded from § 744.23(a)(4) if it is subject to the EAR and destined for use in the ''development'' or ''production'' of ICs at a facility that ''produces'' ''advanced-node integrated circuits'' (or if the technology node of the ICs is unknown) in China or Macau.

Topic 28: A commenter noted that photomasks are not ''parts,'' ''components,'' or ''equipment,'' so they are outside the scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)). This commenter seeks BIS's confirmation that no license would be required for exports, reexports, or transfers (in-country) of items subject to the EAR that are intended for use in photomask manufacturing in China because photomasks, even if specified in ECCN 3B001 or 3B991, are not captured within the end-use scope of § 744.23(a)(4).

BIS response: Under the EAR, a photo mask is ''equipment.'' ECCN 3B991 controls ''[e]quipment not controlled by 3B001 for the manufacture of electronic ''parts,'' ''components,'' and materials (See List of Items Controlled), and ''specially designed'' ''parts,'' ''components'' and ''accessories'' therefor.'' ECCN 3B991.b.2.a controls ''[f]inished masks.'' Nonetheless, BIS has excluded these items from the end-use scope of § 744.23(a)(4) as masks are not used in the ''development'' or ''production'' of SME. See the response to Topic 27, above, for additional guidance on the treatment of masks, reticles, and mask substrates under § 744.23(a)(4) and other end-use controls.

Appropriate Scope of SME End-Use Controls for Back-End Testing Equipment

Topic 29: A commenter requested that BIS exclude items that are exclusively for use in back-end activities, including ECCN 3A992.a or 3B992.b.4, and EAR99 items, from §§ 744.23(a)(1) and (2) (former § 744.23(a)(1)(iii) and (iv), (a)(2)(iii) and (iv)) and 744.6(c)(2). This commenter noted that these controls impose licensing obligations over the export, reexport, and transfer to or within China or Macau of their post-production test equipment, whether subject to the EAR or not, if they would be for use in the ''production'' of semiconductors ''at'' a covered facility. This commenter noted that this location-specific control makes no policy sense with respect to their post-production test equipment, because their products have no bearing on the key characteristics of advanced-node ICs described in the definition of ''advanced-node integrated circuit'' (former § 744.23(a)(1)(iii)(A), (B), or (C)).

BIS response: BIS agrees. Consistent with BIS's October 7 IFR Frequently Asked Questions (FAQ) II.A.1, which may be found at *https://www.bis.doc.gov/index.php/documents/product-guidance/3211-2023-1-25-updated-faqs-for-oct-7-advanced-computing-and-semiconductor-manufacturing-equipment-rule/file,* posted on January 25, 2023, this SME IFR adds a new paragraph (a)(5) (Back-end exclusion) to § 744.23 and specifies under this paragraph that for purposes of § 744.23(a)(2), the term ''production'' does not apply to back-end steps, such as assembly, test, or packaging that do not alter the integrated circuit technology level. If there is a question at the time of export, reexport, or transfer (in-country) about whether a manufacturing stage is ''back-end'' or whether a back-end activity ''alter[s] the semiconductor technology level,'' you may submit an Advisory Opinion request to BIS pursuant to § 748.3(c) for clarification.

Topic 30: A commenter noted that semiconductor automated test equipment (ATE) should be considered ''use'' equipment rather than ''production'' equipment. The commenter requested BIS confirm in its response to the comments that semiconductor ATE are, for purposes of the controls at issue in §§ 734.9(e), 744.6(c)(2), and 744.23, ''use'' equipment and not ''production'' equipment, as these terms are defined in the EAR. The commenter noted that the EAR define ''use'' as meaning the ''operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing.'' This commenter's ATE is used to check already-produced items and is not part of the semiconductor production process that is the policy concern that BIS is seeking to address in implementing the controls in § 734.9(e), § 744.6(c)(2), or § 744.23.

BIS response: BIS does not agree that testing equipment is ''use'' equipment because testing is specifically listed under the definition of ''production'' in § 772.1 of the EAR. However, this commenter's concerns should be addressed by the new exclusion for certain ''back-end'' equipment under new paragraph § 744.23(a)(5).

Topic 31: A commenter requested that BIS exclude certain items from § 744.23(a)(4) (former § 744.23 (a)(2)(v)), particularly ECCN 3B992.b.4.b and related EAR99 items for use in developing or producing other ECCN 3B992.b.4.b items, that are exclusively

for use in back-end activities. This commenter believes that controlling the export to China or Macau of these items is an unintended impact of the October 7 IFR. These controls have a far bigger and even more unintended impact on this commenter's U.S. suppliers of parts and components that ship to China for use in producing ECCN 3B992.b.4.b items. This commenter also requested that if a carve out for certain ECCN 3B992.b.4.b items cannot be added for ''back-end'' activities, BIS should issue a temporary general license (TGL) to allow continued development and production of these items in China.

BIS response: BIS agrees that the principal underlying the exclusion for back-end testing in § 744.23(a)(5) should also apply to § 744.23(a)(4), see discussion below under section C.11. BIS has also added a new TGL to allow companies to continue exporting less restricted SME ''parts,'' ''components,'' or ''equipment'' to destinations in Country Group D:5 countries (including China) and Macau if the recipient is ''developing'' or ''producing'' ''parts,'' ''components, or ''equipment'' at the direction of a U.S. or Country Group A:5 or A:6-headquartered company that is not majority owned by an entity headquartered in either Macau or a destination specified in Country Group D:5.

Technology Nodes Under Advanced Node ''Facility'' End-Use Controls

Topic 32: A commenter noted that the phrase ''technology node'' in §§ 744.6 and 744.23 does not have a consistent technical meaning and could refer to the smallest resolvable feature at varying fields or pitch characteristics. To illustrate the complexity of this issue, clever proprietary techniques (*e.g.,* double patterning, multi-pass) can make equipment exclusively intended for larger features capable of producing smaller features.

BIS response: BIS agrees. This SME IFR adds a new Note to the definition of ''advanced-node integrated circuits'' in § 772.1 to define the term ''technology node'' to refer to the Logic Industry ''Node Range'' figure described in the ''International Roadmap for Devices and Systems,'' 2016 edition (''More Moore'' White Paper). BIS welcomes comment on this definition in response to this SME IFR.

Topic 33: A commenter noted that BIS needs to define half-pitch or otherwise describe how one determines whether a DRAM IC ''uses a production technology node of 18 nm half-pitch or less for purposes of §§ 744.6(c)(2)(i) and 744.23(a)(2).'' The commenter noted that the October 7 IFR did not do so and requested that BIS publicly identify the correct methodology.

BIS response: BIS agrees. This rule revises §§ 734.4(a)(3), 744.6(c)(2)(i) and (ii), and 744.23(a)(2) to refer to a new definition of ''advanced-node integrated circuits'' set forth in § 772.1. This definition specifies the calculation methodology for determining whether a DRAM IC uses a ''production technology node of 18 nanometer half-pitch or less.''

Topic 34: A commenter requested that BIS draw a distinction between semiconductor fabrication processing test equipment, which does warrant control, and semiconductor screening test equipment, which does not. This commenter noted that there are two primary categories of semiconductor test equipment: (1) semiconductor fabrication processing test equipment, which provides measurements for process control parameters and ensures that Chemical Vapor Deposition (CVD), Physical Vapor Deposition (PVD), lithography, and other pieces of equipment and additive manufacturing processes work as required to produce the semiconductor; and (2) semiconductor screening test equipment, which provides measurements used to establish if individual manufactured devices satisfy quality requirements and can be shipped. This commenter noted that former items are necessary to the proper operation of a semiconductor fabrication plant, and include essential elements used during the fabrication process to produce a viable semiconductor.

BIS response: This comment is addressed by the addition of new paragraph § 744.23(a)(5) in this SME IFR, described in greater detail below in section C.11. BIS has created a distinction between these two types of test equipment. As described by this commenter, semiconductor fabrication processing test equipment appears to include equipment that is used in front-end integrated circuit fabrication steps, while semiconductor screening test equipment would appear to be used only in back-end production steps. If the semiconductor screening test equipment is used exclusively in back-end production stages that do not alter the technology level of the ICs produced, the equipment does not trigger the end-use scope in paragraphs § 744.23(a)(2) or § 744.6(c)(2)(i) and (ii), because this type of test equipment qualifies for the back-end exclusion under paragraph § 744.23(a)(5) and the exclusion in § 744.6(d)(3).

SME End-Use Controls and Their Relationship to Nodes of Concern

Topic 35: A commenter noted that § 744.23(a)(4) (former § 744.23(a)(2)(v)) overreaches because it is not tied to the end use of concern. This commenter noted that because § 744.23(a)(4) is so broad, vendors cannot supply any U.S.-origin equipment or parts that will be used in the ''development'' or ''production'' in China or Macau of any ''parts,'' ''components,'' or ''equipment'' specified under ECCN 3B001, 3B002, 3B090, 3B611, 3B991, or 3B992, even though such activity does not require a license under § 744.23(a)(2).

BIS response: BIS has narrowed both the product scope and end use scope of § 744.23(a)(4) in light of U.S. national security concerns. That section has been narrowed to items subject to the EAR and specified on the CCL by this rule. As noted above, § 744.23(a)(4) restricts the ''development'' and ''production'' of items, including node-agnostic front-end tools, that would erode the effectiveness of other end-use controls on the ''development'' or ''production'' of advanced-node ICs. Section 744.23(a)(4) also more broadly inhibits the development of an indigenous ecosystem in Macau or destinations specified in Country Group D:5 for the ''development'' and ''production'' of front-end SME, which supports the longer-term effectiveness of controls with respect to advanced-node IC controls. As noted elsewhere, BIS welcomes comment on whether there are specific front-end SME items that are used exclusively in legacy production. Moreover, to address the commenter's concerns about the breadth of this control, BIS is issuing a new TGL in this SME IFR. See discussion in section C.6 of this rule.

Topic 36: A commenter asked BIS to limit the scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)) to higher-end advanced-node capabilities and exclude items used in legacy ''production.'' The commenter also suggested that BIS consider limiting the end-use restrictions under § 744.23(a)(4) on exports of 3B991 items to China or Macau to items capable of use in higher-end advanced-node capabilities and exclude items in paragraphs of 3B991 that are not designed for semiconductor manufacturing.

BIS response: BIS partially adopted this recommendation by narrowing both the product scope and end-use scope of paragraph (a)(4), but not by technology level. See discussion in section C.11.c. BIS also notes that the presumption of denial license review policy leaves room for an applicant to make a case for

approval, unlike a policy of denial. Also note that many of the parameters for SME in ECCN 3B001 have been changed from ''capable of'' to ''designed for.'' Separately, BIS welcomes additional feedback from this commenter, or any other interested party, on whether specific 3B991 items warrant exclusion from the scope of § 744.23(a)(4), for reasons including if they are not used in IC manufacturing or are exclusively used at legacy production technology nodes.

Requested Changes or Clarifications to § 744.23

Topic 37: A commenter noted that difficulty in identifying fabs of concern will lead to overcompliance or delays relating to obtaining licenses that may not be needed. This commenter noted that in situations where a company is unable to determine whether a fabrication facility is a covered fabrication facility, the most likely course of action is (i) to over-comply and abandon a transaction for fear of potential non-compliance or (ii) seek a license and risk loss of the business as a result of delay, even when ultimately the fabrication facility in question is not a covered fabrication facility.

BIS response: BIS shares concerns that the new § 744.23 from the October 7 IFR may result in over compliance or delays related to obtaining unnecessary licenses. BIS recognized similar issues with the expanded MEU List and § 744.21, but after BIS developed outreach materials, including FAQs for the application of § 744.21, these trends were reduced considerably. BIS anticipates that the addition of § 744.23 and the expanded U.S. person control under § 744.6 will follow a similar pattern.

Narrow the Scope of § 744.23 Fabrication Controls

Topic 38: A commenter noted that there does not appear to be a national security basis for excluding equipment sales to NAND memory fabricating facilities in China because NAND memory is so widely available on the commercial market. This regulation will harm U.S. companies and jobs while boosting the market share gain of our allies where the majority of NAND memory is manufactured.

BIS response: BIS disagrees with this commenter's characterization of the controls. The end use control under § 744.23 and the ''U.S. persons'' control under § 744.6 both now reference the newly defined term ''advanced-node integrated circuits'' added by the SME IFR. That term specifies NAND memory as part of the criteria as well as the level of NAND memory that is a concern (*i.e.,* NOT AND (NAND) memory integrated circuits with 128 layers or more). This higher threshold for NAND memory was intended to distinguish between the type of items easily obtained on the open market and the types of NAND memory that represent national security and foreign policy concerns under the October 7 IFR.

Changes to License Review Policies

Topic 39: A commenter requested BIS replace the current one-size-fits-all presumption of denial for all license requests (under § 744.23(d)) with a review policy that accounts for the specific items involved and their potential for direct use in sensitive or advanced-node IC manufacturing.

BIS response: BIS revised the license review policy under § 744.23(d) to include a presumption of approval license review policy when there is a foreign-made item available that is not subject to the EAR and performs the same function as the item subject to the EAR, and for end users headquartered in the United States or a destination in Country Group A:5 or A:6, that are not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5. As a result, the presumption of denial license review policy does not cover all transactions. In addition, the license review will take into account factors including technology level, customers, and compliance plans.

Topic 40: A commenter noted that their company's very existence requires being able to obtain a license to continue to engage in their activities in China that would otherwise be restricted under § 744.23(a)(4) (former § 744.23(a)(1)(v)) and that the financial impact of these new regulations to this company is massive. This commenter noted that the company's engineering team has been advised to cease all operations and the company's supply chain team has no work because all exports have been put on hold. The company depends on receiving authorization to export parts, software, and technology for the development and production of ECCN 3A991.b.1.c crystal pullers, used to produce ingots and wafers, to China.

BIS response: Upon request, BIS has authorized certain types of transactions requiring a license under § 744.23(a)(4) with authorization letters (ALs). BIS is not able to publicly confirm whether this specific commenter obtained an AL because of confidentiality requirements under ECRA. The ALs reflect a policy to impact ''development'' and ''production'' of SME by indigenous companies located in China. BIS has transitioned away from using ALs to address these types of issues to BIS licenses and other more standard means of authorization.

Topic 41: One commenter expressed concern that the time required to obtain a license would eliminate one of its key competitive advantages for supplying EAR99 items. The commenter feared that even if they were granted a license, the delays caused by the application process for each order of their commodities would eliminate their lead-time advantage over its foreign competitors.

BIS response: Recognizing the availability of EAR99 items from multiple sources, BIS has narrowed the product scope of § 744.23(a)(4) to items subject to the EAR and specified on the CCL, which eliminates the license requirement for EAR99 items for SME. Separately, BIS acknowledges that exports that can be made without a license are more quickly executed. However, because a purchase order is not required under the EAR to apply for a BIS license, it is possible to obtain licenses in advance, which may help address the potential for delays. BIS also notes that licenses are generally valid for a four-year period. Once the license is in place, a company may ship with the same speed at which it did previously when the items could be exported without a license. There is also the possibility that the transaction may be eligible for a TGL or exclusion. The license applicant would need to know the particulars of the transaction to apply for a BIS license.

Additional Guidance on the Scope of SME End-Use Controls

Topic 42: A commenter stated it is inconsistent that § 744.23(a)(4) (former § 744.23(a)(1)(v)) does not establish a license requirement for AT-controlled end-item equipment when not for ''development'' or ''production'' in the China or Macau of any ''parts,'' ''components,'' or ''equipment'' specified under ECCN 3B001, 3B002, 3B090, 3B611, 3B991, or 3B992, but a license is required for items destined for use in the ''development'' or ''production'' of ''parts'' or ''components'' for AT-controlled end-item equipment.

BIS response: BIS does not believe this result is inconsistent with the policy objectives of the October 7 IFR. The purpose of § 744.23(a)(4) is to prevent the indigenous ''development'' or ''production'' of items having national security implications that could erode or circumvent the effectiveness of other end-use controls,

particularly § 744.23(a)(2). This objective is not affected by the export, reexport, or transfer (in-country) of AT-controlled equipment that is already developed or produced, assuming the equipment is not destined for a prohibited end use (*e.g.,* those enumerated in § 744.23(a)(1) and (2)).

Topic 43: A commenter stated that § 744.23(a)(4) (former § 744.23(a)(2)(v)) does not include ''incorporation'' of EAR99 items into Category 3B items. This commenter notes that the wording in § 744.23(a)(4) prohibits the ''development'' or ''production'' of Category 3B items. This commenter believes that if BIS wanted to prohibit the incorporation of EAR99 items (*e.g.,* screws and tubing) into Category 3B items, it should have prohibited the incorporation of any item that is subject to the EAR into a Category 3B item under § 744.23(a)(4), just as it did in § 744.23(a)(2).

BIS response: BIS has narrowed the product scope in paragraph (a)(4) to items subject to the EAR and specified on the CCL. This said, former § 744.23(a)(2)(v) would have captured the incorporation of an EAR99 item into a Category 3B item if the incorporation occurred during the ''development'' or ''production'' of the 3B item. The term ''production'' is defined to include all production stages, such as *manufacture, integration,* and *assembly,* each of which could encompass the activity described by the commenter, depending on the details of the scenario. However, as noted below, BIS omitted the term ''incorporation'' from § 744.23(a)(4) to avoid capturing incorporation of an item (*e.g.,* a replacement part) subject to the EAR into a 3B item *after* that 3B item is already ''developed'' or ''produced.'' Such incorporation would be addressed by other end-use controls. For this reason, incorporation of an EAR99 item into an item that is already ''produced'' (*e.g.,* a tool already in operation in volume production) is not within the scope of § 744.23(a)(4). These types of transactions are instead addressed under end-use controls in § 744.23(a)(2). At the same time, BIS reiterates that § 744.23(a)(4) still captures items destined for use in all stages of the ''development'' or ''production'' of such 3B equipment, up to and including qualification for ultimate use. For example, § 744.23(a)(4) would capture exports of CCL items destined for use by a research and development facility involved in qualifying unfinished 3B equipment as part of the final ''development'' or ''production'' stages for that equipment. By contrast, § 744.23(a)(4) does not capture exports of CCL items (among others) destined for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of equipment that is already ''developed'' and ''produced.'' Other provisions in § 744.23(a)(2) may be applicable to this scenario.

Topic 44: A commenter asked BIS to confirm that a U.S. person's shipment to China, from outside the United States, of foreign-origin items that are not subject to the EAR, but which are destined for use in developing or producing items described in a Group 3B ECCN, are not subject to EAR licensing requirements under § 744.23(a)(4) (former § 744.23(a)(2)(v)). This commenter noted that they asked for this clarification because § 744.23(a)(4) prohibits the unlicensed export, reexport, and transfer of items subject to the EAR if there is knowledge the items will be for the development or production of commodities described in Group 3B ECCNs. The commenter clarified that this question assumes that there are no Footnote 1 or Footnote 4 entities or other § 734.9 issues involved in the transaction. This commenter noted that the difference in scope indicates that a U.S. person's shipment of items not subject to the EAR for use in producing Group 3B items in China is not covered by the new rules.

BIS response: Section 744.23 does not control the export, reexport, or transfer (in-country) of items not subject to the EAR, however, § 744.6 of the EAR does. Depending on the classification of the foreign item and the specific end use of the item, § 744.6(c)(2)(ii) or (iii) may impose a license requirement for items that will be for the development or production of commodities described in Group 3B ECCNs. However, foreign persons engaged in such conduct or directing U.S. persons to do so may be viewed as engaging in activities contrary to U.S. national security or foreign policy interests. Accordingly, the End-user Review Committee could add such foreign person to the Entity List. For example, see BIS's publication of Entity List additions published on December 19, 2022 (87 FR 77505).

Topic 45: A commenter asked BIS to clarify whether a license would be required under § 744.23(a)(4) (former § 744.23(a)(2)(v)) to export an item subject to the EAR to a third party Original Equipment Manufacturer (OEM) in a third country, where there is ''knowledge'' at the time of the export that the item would be incorporated into a foreign-made 3B991 item (not subject to the EAR) by the OEM in the third country, and that the OEM would then send the 3B991 item to a manufacturer of Category 3 items in China. This commenter noted that § 744.23(a) does not expressly state that the ''End Use Scope'' includes the end use of the item into which the exported item is incorporated, and this differs from other EAR provisions, such as the foreign direct product (FDP) rules under §§ 734.9 and 744.23(a)(1)(ii)(B), which expressly include ''incorporated into'' as part of the end-use scope.

BIS response: This commenter did not clarify whether they intended the ''Category 3'' items (*i.e.,* the items being developed or produced in China) to mean only items in Category 3A (*e.g.,* ICs) or other items in Category 3 (*e.g.,* items in Category 3B). Assuming the commenter refers to Category 3A items, more information would be required to determine whether the 3B991 item is ''destined for'' a prohibited end use, *e.g.,* under § 744.23(a)(2). However, if the commenter refers to Category 3B items in ECCN 3B001 (except 3B001.g, .h, and .j), 3B002, 3B611, 3B991 (except 3B991.b.2), or 3B992, a license would be required to export the initial item subject to the EAR (if specified on the CCL) to the third-party OEM. Unless captured by an exclusion in § 744.23(a)(5), § 744.23(a) requires a license when there is ''knowledge'' at the time of export, reexport, or transfer (in-country) that an item subject to the EAR described in paragraphs (a)(1) through (4) is ''destined for'' a destination, end use, or type of end user described in paragraphs (a)(1) through (4) of § 744.23. Paragraph (a) of this section captures items when ''you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item is destined for a destination, end use, or type of end user described in paragraphs (a)(1) through (4) of this section. . . .''. Paragraph (a)(4) then describes the activities that meet the end-use scope of the prohibition, specifically the ''development'' or ''production'' of 'front-end integrated circuit ''production'' equipment' and ''components,'' ''assemblies'' and ''accessories'' specified in certain Category 3, Group B ECCNs. Read together, these provisions prohibit the export, reexport, or transfer (in-country) when you have ''knowledge,'' at the time of export, that the item subject to the EAR that is identified on the CCL ''is destined for'' the ''development'' or ''production'' of 'front-end integrated circuit ''production'' equipment' and ''components,'' ''assemblies'' and ''accessories'' of the covered SME set forth in paragraph (a)(4). This ''knowledge'' that the item ''is destined for'' (either in its original form or as subsequently incorporated into a

foreign-made product) a prohibited activity is sufficient to trigger the applicable license requirement at the time the item subject to the EAR is exported, reexported, or transferred (in-country). For this reason, BIS does not consider the incorporation of the item into a foreign-made product not subject to the EAR to be relevant to the § 744.23 license requirement. BIS officials have provided similar and consistent guidance on these types of upstream transactions that involve ''knowledge'' that the item ''is destined for'' a prohibited end use, including in the context of other part 744 end uses. As to the relevance of the term incorporation, BIS uses this term in §§ 734.9(e) and 744.23(a)(1)(ii)(B) to capture items for use in a foreign-produced item or a ''supercomputer,'' respectively, that may already be ''produced.'' As indicated in response to other comments in this rule, the absence of the term incorporation from § 744.23(a)(4) avoids capturing the incorporation (outside the context of ''production'') of, *e.g.,* replacement parts or components into SME that is already produced. If the SME is otherwise involved in a separate prohibited end use (*e.g.,* it is used in the ''production'' of ''advanced-node integrated circuits''), the transaction must be analyzed separately with respect to any other relevant provisions of the EAR. Note: In this scenario, such knowledge similarly triggers a license requirement for the items identified in § 744.23(a)(4) when a person knows at the time of export that an item subject to the EAR and specified on the CCL ''is destined for'' (either in its original form or as subsequently incorporated into a foreign-made ECCN 3B991 product) a party listed in supplement no. 4 to part 744 of the EAR.

Other Requested Clarifications to § 744.23

Topic 46: A commenter asked BIS to confirm how far back up the supply chain the licensing obligation extends for an export of an item to a third party for use in developing or producing a whole new foreign-made item that will only later be used in the development or production of ICs at a covered facility. This commenter described a scenario in which someone exports an item to produce a foreign-made item, which will be used to produce another foreign-made item, which will later be used at a covered fabrication facility, and asked whether the original export is caught by the new licensing obligations if there is knowledge that this supply chain will ultimately result in the creation of an item used to produce ICs at a covered fabrication facility. The commenter further inquired about the transfer outside the United States of items subject to the EAR to produce foreign-made items when only a small percentage of the foreign-made items will be for use at a covered fabrication facility. Specifically, the commenter asked whether BIS takes the position that 100% of all such transfers require a license by the foreign parties even when only an unknown small percentage will be used in the production of items that will ultimately be destined to covered fabrication facilities.

BIS response: If the exporter has ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item is ultimately destined for a prohibited end use, the license requirement would extend to the original export, reexport, or transfer (in-country). If not properly authorized, then a subsequent party would be prohibited from relying on *de minimis* for an item that was involved in an EAR violation pursuant to § 764.2(e). See also BIS response to Topic 45.

Topic 47: A commenter noted that clarification of § 744.23(a)(2)(iv), which has been redesignated as paragraph (a)(2)(ii) in this SME IFR is needed if this imposes an affirmative duty to know or otherwise be subject to a license requirement. The commenter asks whether this means that a license is required when a company is exporting products to China and cannot confirm whether the semiconductor fabrication facility is producing products that meet the specified criteria in paragraphs (a)(2)(iii)(A) through (C), which has been redesignated as paragraphs (a)(2)(i) and (ii) in this SME IFR.

BIS response: Yes, if the exporter, reexporter, or transferor has ''knowledge'' that an item identified in § 744.23(a)(2)(iv), which has been redesignated as paragraph (a)(2)(ii) in this SME IFR will be used in the ''development'' or ''production'' of ICs in China or Macau, but does not have ''knowledge'' of whether such ICs are or will be ''advanced-node integrated circuits,'' a license is required. This BIS response would also apply to a similar scenario in which an exporter, reexporter, or transferor has positive ''knowledge'' that their 3B/C/D/E products are used by some number of entities engaged in legacy development/production, but they do not know how 100% of their product is used (*e.g.,* because they are an upstream distributor and cannot keep track of all of it). A license is required to ship 100% of the items, unless the exporter, reexporter, or transferor can determine which items of the 100% will not be used in the ''development'' or ''production'' of ICs in China or Macau, which would be excluded from the license requirement under § 744.23(a)(2)(iv), redesignated as paragraph (a)(2)(ii) in this SME IFR.

Separate SME End-Use Controls Into Their Own Section and Provide More Specificity on Items Covered

Topic 48: A commenter requested that it would be easier to navigate the controls in § 744.23, if the prohibitions under § 744.23(a)(2) and (4) (former § 744.23(a)(1)(iii) and (a)(2)(iii) and (a)(1)(v) and (a)(2)(v)) were in separate sections. Also given the broad scope of § 744.23(a)(4), this commenter requested creating new items level paragraphs under ECCNs 3B001, 3B002, 3B090, 3B611, 3B991, and 3B992 that identify the types of equipment that BIS intends to control under § 744.23(a)(4) rather than ''catching'' such a broad spectrum of semiconductor manufacturing and test equipment.

BIS response: BIS has reformatted the controls in § 744.23(a) by combining the product scope and end use scope into one paragraph for each type of item: (a)(1) ''supercomputers,'' (a)(2) ''advanced-node integrated circuits,'' and (a)(4) semiconductor manufacturing equipment. With respect to § 744.23(a)(4), BIS clarifies here and elsewhere in this rule that a license is required for items subject to the EAR specified on the CCL when destined to an entity headquartered and located in either Macau or a destination specified in Country Group D:5 for use in the ''development'' or ''production'' of 'front-end integrated circuit ''production'' equipment' and certain ''components,'' ''assemblies'' and ''accessories'' in ECCN 3B001 (except 3B001.g, .h, and .j), 3B002, 3B611, 3B991 (except 3B991.b.2), or 3B992. If the exporter ''does not know'' the technology node for which a 3B item will be used (*see* § 744.23(a)(2)), then that is the only situation where the catch-all license requirement would apply for the export, reexport, or transfer (in-country). All the other end-use controls in § 744.23(a) now have specific product scopes.

Acceptable Level of Due Diligence for § 744.6(c)(2)

Topic 49: A commenter requested BIS clarify whether it would be sufficient under § 744.6 to have an end user certify that the exported item will not be used in ''the ''development'' or ''production'' in China of any ''parts,'' ''components,'' or ''equipment'' specified under ECCN

3B001, 3B002, 3B090, 3B611, 3B991, or 3B992.

BIS response: BIS interprets this comment to refer to the end-use control under § 744.23(a)(4) (former § 744.23(a)(2)(v)), as there is no U.S. person control under § 744.6(c)(2) with the characteristics described by the commenter. Obtaining an end-user statement, even if not required under the EAR, is a good compliance practice, but is not by itself determinative. The exporter, reexporter, or transferor must evaluate all the information that it obtains during the normal course of business to determine if it has ''knowledge'' that the item is ultimately destined for use in a prohibited activity. BIS also reminds exporters, reexporters, and transferors that they may not self-blind to avoid these license requirements and that the act of self-blinding would be a violation of the EAR.

Topic 50: A commenter expressed concern about the October 7 IFR's restrictions on U.S. persons' activities under § 744.6(c)(2), including at semiconductor fabrication facilities and branches of certain multinational companies in China that are headquartered in the United States, South Korea, Taiwan, and other destinations. The application of such restrictions to the ''shipping, transmitting, or transferring (in-country) of any item not subject to the EAR to development [of] a chip at a proscribed level'' is extremely broad.

BIS response: This SME IFR adds an exclusion in § 744.6(d)(4) for companies headquartered in the United States or in a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity that is headquartered in either Macau or a destination specified in Country Group D:5. The exclusion will authorize ''U.S. persons'' to engage in activities that would otherwise be prohibited under § 744.6(c)(2)(i) through (iii).

Information Needed From Other Parties To Comply With These Controls

Topic 51: A commenter noted that most companies that ship items caught under 3B, 3C, 3D, or 3E, will not be able to determine whether items are going to a prohibited semiconductor fabrication facility, *e.g.,* for companies that supply components or materials, as there may be many layers of purchasing between themselves and any covered fabrication facility engaged in the ''development'' or ''production'' of NAND, logic, or DRAM integrated circuits. This commenter noted that it is also possible that some companies will conclude that the new controls require exporters, reexporters, and transferors of such items to find out the answer to this question for each shipment or for group transactions.

BIS response: BIS is aware that the end-use control under § 744.23(a)(2)(iv), which has been redesignated as paragraph (a)(2)(ii) in the AC/S IFR, may present a compliance challenge for certain exporters, reexporters, or transferors, but this control is important for protecting U.S. national security and foreign policy interests. Companies in China that are transparent with their capabilities with exporters, reexporters, and transferors will see a reduced impact of § 744.23(a)(2)(iv), now redesignated as paragraph (a)(2)(ii), and those that are not transparent will see an increased impact of § 744.23(a)(2)(ii).

Temporary General License and Supply Chain Authorization Letters (ALs)

Topic 52: A commenter noted that the TGL played a major role in avoiding disruptions to supply chains and that the TGL was critical to maintain continuing operations and avoid major business disruptions. This commenter also requested that the TGL be extended for at least one year to allow time to build the capacity to relocate supply chain activities outside of China.

BIS response: BIS interprets this comment's reference to the ''TGL'' to refer to the supply chain ALs issued in the wake of the October 7 IFR. BIS addresses issues related to the existing TGL for 3A090 and related items in this second IFR. Separately, with respect to SME, BIS has issued a new TGL for less restricted SME ''parts,'' ''components,'' or ''equipment'' to address other more significant supply chain disruptions arising from the October 7 IFR. BIS's experience with the original TGL was that it played a helpful role in the initial transition to the October 7 IFR, but that it was only used by a small set of companies engaged in making ECCN 3A090 ICs and related items. Prior to April 7, 2023, when that TGL expired, these exporters, reexporters, and transferors were able to obtain other authorizations as needed to continue with these types of activities in China or Macau. For this reason, BIS does not intend to reinstate the TGL that expired.

Topic 53: A commenter noted that the TGL from the October 7 IFR did not go far enough to eliminate all disruptions in semiconductor supply chains. This commenter noted that by forcing the termination of ''non-listed activities'' that had already been occurring in China, the U.S. Government caused disruptions and supply chain related delays.

BIS response: BIS regrets that companies may have paused or ceased activities that were not ultimately restricted by the October 7 IFR and encourages industry to engage with BIS to confirm the scope of controls when needed. Separately, BIS agrees that the original TGL was not broad enough in scope to address other unintended consequences of the October 7 IFR, including those related to § 744.23(a)(4) (former § 744.23(a)(2)(v)). However, BIS addressed these issues with ALs as warranted in consideration of supply chains, and BIS has subsequently issued licenses to address other specific unintended consequences related to the supply chains of U.S. and allied-destination companies. This issue is further addressed with the issuance of a new TGL and an exclusion in this SME IFR. The TGL is further discussed in section C.6 of this rule and the exclusion to § 744.23 is discussed in section C.11.

Topic 54: Many commenters noted that industry needs longer-term and more permanent solutions than the ALs to relieve the unintended consequences of the October 7 IFR. These comments covered concerns both with respect to multinational fabrication facilities as well as companies that employ foreign nationals from China in the ''development'' or ''production'' of Category 3B items. With respect to multinational fabrication facilities, one commenter requested that the ALs be extended with a two-year validity period.

BIS response: BIS agrees that longer term authorizations are warranted, and that the one-year ALs were intended merely as a short-term bridge. The new TGL in this SME IFR, which is valid until December 31, 2025, temporarily authorizes specific activities with certain conditions and requirements, as applicable. BIS also notes that exporters, reexporters, and transferors may apply for BIS licenses to obtain long-term predictability or amendments to their Validated End Users (VEU) authorizations.

Other Ways That BIS Can Consult With Industry To Better Improve the Effectiveness of Policies in This Area

Topic 55: A commenter noted that ECRA section 1765 (50 U.S.C. 4824) requires BIS to submit to Congress by the end of the year a report on the implementation of ECRA during the previous year. Subsection (a)(2) requires that the annual report include a description of ''the impact of [all that year's] controls on the scientific and technological leadership of the United States.'' In addition, ECRA section

1752(1) (50 U.S.C. 4811(1)) states that the United States should ''use export controls only after full consideration of the impact on the economy of the United States.'' Similarly, ECRA section 1752(3) states that the impact of the implementation of new controls on U.S. leadership and competitiveness ''must be evaluated on an ongoing basis and applied in imposing controls . . . to avoid negatively affecting such leadership.'' This commenter believes that it is important for BIS to obtain formal industry input on this specific topic so that its report to Congress is accurate and complete.

BIS response: BIS agrees that it may be beneficial to allow for public input to assist BIS in preparing this annual report. BIS intends in the next annual cycle for this report to publish a notice to solicit comments in the area. BIS will then evaluate the amount and type of public input provided to the agency to determine if continuing to publish this type of notice is worthwhile in the future.

Advanced Computing FDP Rule—§ 734.9(h)

Topic 56: A commenter noted that the new § 734.9(h) Advanced computing FDP rule is not needed because it is already covered by pre-existing § 734.9(b) National Security FDP rule.

BIS response: BIS does not agree. There is some cross over between these two FDP rules, but the Advanced Computing FDP rule extends to certain items that the National Security FDP rule does not, so the Advanced Computing FDP rule is necessary to address the national security and foreign policy concerns included in the October 7 IFR.

Meaning and Scope of 'Support' Under U.S. Person Control in § 744.6(b)(6)

Topic 57: A commenter noted that the exact definition of ''support'' is not clear under the October 7 IFR. BIS should consider reconfiguring certain definitions to factor in business processes in the logistics sector. This commenter requested that BIS publish additional guidance on how logistics firms can understand and apply ''support'' requirements to their supply chains without inducing severe operational disruptions.

BIS response: The term 'support' is defined for purposes of § 744.6 under paragraph (b)(6). BIS also notes that the term 'support' is not a new term added in the October 7 IFR. However, based on the comments received in response to the October 7 IFR, BIS agrees that additional clarifications should be made on what types of activities involving 'support' are excluded, such as certain logistics activities. The AC/S IFR states here that for logistics companies, the prohibited act is the actual delivery, by shipment, transmittal, or transfer (in-country), of the item and the act of authorizing the same.

Topic 58: A commenter noted that it is unclear whether U.S. person ''support'' for semiconductor fabrication is limited to shipping, transmitting, transferring or servicing items for advanced PRC fabrication facilities, or if it also includes the broad scope of ''support'' in § 744.6(b), including performing any contract, service, or employment that you ''know'' may assist or benefit advanced semiconductor fabrication in China.

BIS response: BIS's answer to FAQ IV.A2, published on its website, specifies that it only applies to § 744.6(c)(2). As such, it is intended to provide exhaustive guidance for paragraph (c)(2), but not otherwise limit the scope of § 744.6(b) or apply to other uses of the term facilitate or facilitation found elsewhere in the EAR. However, BIS also cautions ''U.S. persons,'' as well as any other person, that may have acquired technology or software source code in the United States, that the subsequent release of that ''technology'' or software source code to PRC nationals would be regulated under the EAR as a release, and if subject to the October 7 controls or the controls in either the AC/S IFR or SME IFR, will require a license.

What activities are considered 'facilitating' under the U.S. person control?

Topic 59: Some commenters noted that there is not an adequate definition of ''facilitation'' under § 744.6 or any other EAR provision that provides the industry with sufficient detail to comply with the law and request licenses when necessary.

BIS response: For purposes of § 744.6(b)(6)(iii), BIS intends facilitating such shipment, transmission or transfer (in-country) to means to make easier by helping to bring about. Facilitation does not include administrative, clerical, legal advice, or regulatory advice activities, but does include any other activity that is directly responsible for bringing about such a prohibited activity is covered under facilitation.

Topic 60: One commenter asked BIS to assess eight types of activities and provide guidance on whether they amount to ''facilitation.''

BIS response: BIS would not consider the following five activities to be ''facilitation,'' provided that they are performed by administrative or clerical staff and are undertaken only to carry out a decision maker's decision to export, reexport, or transfer (in-country) items that may require a license under the EAR: provision of back-office services that help the business to function, such as IT services, financial services, or human resources support; order intake and processing; invoicing and cash or receivables collection activities; legal advice and counseling on the requirements of the EAR or other compliance obligations; and referring any matters or opportunities to non-U.S. persons. Two other activities raised by the commenter would not require a license because although they are a type of facilitation that would otherwise be prohibited, they have been authorized and, as such, the ''U.S. person'' could engage in these types of authorized facilitation activities: trade compliance clearance of licensed shipments or other authorized activities with PRC semiconductor customers including Entity List parties and providing administrative and limited servicing support for shipments to Entity List parties authorized by BIS licenses.

Finally, with respect to ''management oversight by U.S. persons located in China or abroad,'' BIS would need additional information on whether the oversight involves decisions to export, reexport, or transfer (in-country) items that require a license under the EAR. If it did, the oversight as a type of facilitation would require a license.

Topic 61: A commenter asked whether knowledge of a violation is a requirement to trigger the license requirements under § 744.6.

BIS response: Yes, the ''U.S. person'' control under § 744.6 is triggered by ''knowledge.'' This SME IFR revises the paragraph (c)(2) introductory text to make this point more clearly.

Topic 62: A commenter asked whether BIS will presume that a company's executives (*e.g.,* chief executive officer (CEO), chief financial officer (CFO), chief operating officer (COO), President, Board of Directors) ''facilitated'' a restricted transaction, even if those company executives were ''U.S. persons'' but did not have knowledge of a violative transaction. The commenter further asks BIS to provide distinguishing examples.

BIS response: These types of scenarios would be case specific and may lead to different outcomes depending on the nature of the company's work and the role that the official plays in that company and in the activity at issue. If, as posited by the commenter, the official later asserted that they lacked the requisite knowledge, BIS would assess what the official knew or should have

known with respect to the prohibited activity. Limiting the information that would normally be coming to these officers may result in a violation of the EAR, if it is determined these steps were taken to try to avoid EAR license requirements. For officers that do receive information about transactions that may otherwise be prohibited under § 744.6, BIS would look at the role of that corporate officer and whether their decisions on behalf of the company would otherwise be prohibited under one of the 'support' activities under § 744.6.

Topic 63: A commenter asked BIS to identify what compliance methods the agency recommends for U.S. persons employed by multinational companies that engage in restricted transactions listed under § 744.6.

BIS response: First, the entity and natural persons all should identify whether they are ''U.S. persons'' as defined in § 772.1. If the company is a ''U.S. person,'' then all activities of that company will need to be reviewed in accordance with the ''U.S. person'' control. If it is only certain natural persons at a company that are ''U.S. persons,'' then those ''U.S. persons'' need to be aware of the § 744.6 end-use controls and comply with those as applicable, which may involve simply excluding themselves from those types of activities or obtaining a BIS license as needed. BIS notes that the SME IFR published elsewhere in this issue of the **Federal Register** also adds several exclusions to § 744.6(d), which may be applicable as well.

C. Expansion of Export Controls on Semiconductor Manufacturing Items

This section describes the specific EAR revisions adopted in this IFR, which expand and refine the October 7 IFR with respect to semiconductor manufacturing and SME and addresses the national security concerns that led to an expansion of the country scope for SME and related software and technology.

Overview of EAR Amendments

Principally, this rule removes ECCN 3B090 and replaces and expands its provisions in ECCNs 3B001 and 3B002. This rule also harmonizes revisions to controls on associated software and technology therefor. Among other harmonizing changes, BIS revises the heading of ECCN 3B001 by adding the phrase ''and equipment for manufacturing semiconductor manufacturing equipment'' to reflect the expanded scope of items in this ECCN. BIS also adds a definition for ''Extreme Ultraviolet'' (''EUV'') to § 772.1 because this term is now used within multiple ECCNs under 3B001, 3B002, and 3D003. Specific changes to ECCNs 3B001, 3B002, 3D001, and 3E001 as well as information about the removal of ECCN 3B090 are described below, in sequential order of the ECCNs; see sections C.1 through C.4 of this rule. The rule also imposes 0% *de minimis* for ECCN 3B001.f.1.b.2.b (specified lithography equipment), discussed in section C.5 of this rule. The addition of a new TGL is discussed in section C.6. BIS also notes restrictions under § 740.2(a)(9) on the use of license exceptions for any of these ECCNs, discussed in section C.7 of this rule.

BIS has determined that the newly added items under ECCNs 3B001 and 3B002, and associated software and technology therefor, are, with limited exceptions, only used for fabricating logic ICs with non-planar transistor architecture or with a ''production'' 'technology node' of 16/14 nanometers or less. These items are controlled for National Security (NS) and Regional Stability (RS) reasons, and those changes are discussed in sections C.8 and C.9, respectively. As noted above, although these items are not yet formally controlled under a multilateral regime, the urgency and criticality of the U.S. national security concerns stated in section A dictate control pending adoption through the Wassenaar Arrangement. Each of the items added with this SME IFR are key to production of ''advanced-node integrated circuits,'' such as, advanced memory integrated circuits that will be necessary to enable new platforms to leverage advanced analytics or autonomy in ways that will be essential to the twenty-first century battlefield. Their inclusion in these controls reflect BIS's focused approach based on the critical national security applications of the most advanced ICs. For those that already hold a license that covers the expanded scope of controls, there is no need to reapply for a license.

This rule also revises the activities of ''U.S. persons'' controls in § 744.6 as well as § 744.23 regarding ''supercomputer,'' ''advanced-node integrated circuits,'' and semiconductor manufacturing equipment end use controls, and those changes are discussed in sections C.10 and C.11, respectively. The rule also adds two new definitions to § 772.1, ''advanced-node integrated circuits'' and ''extreme ultraviolet,'' which are discussed in section C.12.

National Security Considerations for Expanding Controls and Country Scope

This rule also expands the country scope of the controls for the items in this rule from ''China and Macau'' to ''Macau or destinations specified in Country Group D:5'' of supplement no. 1 to part 740. BIS imposed these new controls to protect U.S. national security interests by restricting China's military modernization efforts and degrading its ability to violate human rights, as well as the national security threats posed by other arms embargoed countries. The advanced computing integrated circuits (ICs), semiconductor manufacturing equipment (SME) essential to producing advanced-node ICs, and items used to further supercomputing capacity controlled through the October 7 IFR have profound implications for the future of international security. They are critical for the further development of not only weapons of mass destruction (WMD) but also many concerning emerging technologies such as advanced AI systems, autonomous weapons, cyberweapons, hypersonics, as well as high-tech surveillance applications which China has stated it will use in its next generation military capabilities and to engage in activities contrary to democratic values. These advances will result in future challenges to the United States' and partners' militaries as China pushes towards its goal of fielding a military by 2027 designed to deter U.S. intervention in a future cross-Strait crisis.

The destinations described in Country Group D:5 and Macau are those BIS has previously identified as being destinations of national security concern, WMD developing countries, diversion countries of concern or as a country subject to a U.S. arms embargo or sanction, United Nations Security Council sanction, or countries that the Secretary of State has determined to be State Sponsors of Terrorism. Adding a license requirement for destinations in Country Group D:5 (which includes all the countries in Country Group E, plus countries such as Afghanistan, Belarus, China, Iraq, Libya, Syria, Russia, and Venezuela) will provide greater visibility into the flow of semiconductor manufacturing equipment, associated development and production technology and software, as well as specially designed parts, components and assemblies therefor to other countries and their intended end uses. As noted in the February 6, 2023 Annual Threat Assessment of the U.S. Intelligence Community, ''foreign intelligence services are adopting cutting-edge technologies—from

advanced cyber tools to unmanned systems to enhanced technical surveillance equipment—that improve their capabilities and challenge U.S. defenses.'' The report noted that potential advances in semiconductors and high-performance computers by adversaries, including China, could pose challenges to the U.S. military.

China in its latest Five-Year Plan is attempting to generate a self-sufficient design and production capacity of ''advanced-node integrated circuits'' to create ''secure and controllable'' indigenous supply chains. The United States—as a leader in the SME industry—must focus on and regulate the next increment of semiconductor development by controlling the export of critical SME and associated development and production technology and software, as well as activities of U.S. persons that support such SME development and production in countries of concern. These measures will help ensure ''advanced-node ICs'' are not going to end users and end uses of concern, which would threaten national security.

The expanded country scope is implemented through amendments to §§ 742.4 and 742.6, national security and regional stability reasons for control respectively, which are discussed in sections C.8 and C.9 of this rule.

1. Revisions to ECCN 3B001

This section discusses the amendments to ECCN 3B001. No changes were made to ECCN 3B001 paragraphs .b, .e, or .g through .j. The heading of ECCN 3B001 is revised by adding the phrase ''and equipment for manufacturing semiconductor manufacturing equipment'' after the word ''materials.''

The License Requirement table is revised to apply NS:2 controls only to items listed in ECCN 3B001 prior to adoption of this rule. Newly listed ECCNs (3B001.a.4, c, d, f.1.b, and k to p, described below) are controlled for NS, RS, and AT reasons, as identified in new paragraphs under §§ 742.4(a)(4) (NS) and 742.6(a)(6) (RS), which applies only to Macau and destinations specified in Country Group D:5. All of the items in the ECCN continue to be controlled for Anti-Terrorism (AT) reasons and subject to an AT:1 license requirement. The License Requirement table is revised to identify these reasons for control.

License Exception Shipments of Limited Value (LVS) eligibility is revised by removing eligibility for semiconductor manufacturing equipment specified in ECCN 3B001.a.4, c, d, f.1.b, k to p. Only license exceptions found in § 740.2(a)(9) of the EAR may be used for specified semiconductor manufacturing equipment such as this.

ECCN 3B001.a.4 is added to control equipment designed for silicon (Si), carbon doped silicon, silicon germanium (SiGe), or carbon doped SiGe epitaxial growth with specified parameters. BIS notes that the material referred to in 3B001.a.1 do not contain silicon and that the material in ECCN 3B001.a.4 includes silicon and silicon plus other specified elements. Items that are specified in ECCN 3B001.a.4 are controlled for NS reasons under § 742.4(a)(4) and RS reasons under § 742.6(a)(6)(i). Consistent with § 742.4(b)(2) and (10), items specified in ECCN 3B001.a.4 will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under other provisions in part 744 of the EAR. The equipment included in ECCN 3B001.a.4 uses high-vacuum or inert environment technology to ensure highly clean and controlled conditions during the epitaxial growth process.

ECCN 3B001.b is revised to add ''Semiconductor wafer fabrication'' in front of ''equipment designed for ion implantation'' in order to limit the application of this control to specific equipment.

ECCN 3B001.c previously was used to control anisotropic plasma dry etching that was decontrolled in 2015 due to availability from countries that do not participate in the Wassenaar Arrangement. ECCN 3B001.c.1 is now added to establish controls on equipment designed for dry etching, including isotropic dry etching as specified (ECCN 3B001.c.1.a) and anisotropic dry etching as specified (ECCN 3B001.c.1.b and c.1.c). The atomically precise equipment described in this rule is only available from Wassenaar Arrangement Participating States. Isotropic dry etching is required for lateral etching. Gate-All-Around Field Effect Transistors (GAAFETs) and similar 3D structures with different brand names require lateral etching with high selectivity. Atomic layer etching enhanced by the features described in ECCN 3B001.c.1.a., b., and c. produce the vertical edges required in high-quality, leading-edge advanced devices and structures, including GAAFET and similar 3D structures. Note 1 is added to inform the public that ECCN 3B001.c includes etching by 'radicals', ions, sequential reactions, or non-sequential reactions. Note 2 is added to inform the public of the types of etching that are included in the scope of ECCN 3B001.c.1.b, *e.g.,* etching using RF pulse excited plasma, plasma atomic layer etching, and plasma quasi-atomic layer etching. In addition, two technical notes are added to define two terms used in the control text of ECCN 3B001.c.1.a, c.2, and ECCN 3B001.c Note 1, which are 'silicon germanium-to-silicon (SiGe:Si) etch selectivity' and 'radical,' now defined in Technical Notes 1 and 2, respectively.

ECCN 3B001.c.2 is added to control equipment designed for wet chemical processing and having a largest 'silicon germanium-to-silicon etch selectivity' ratio of greater than or equal to 100:1. The definition for the term 'silicon germanium-to-silicon (SiGe:Si) etch selectivity' is found in Technical Note 1 to ECCN 3B001.c. Wet chemical processing is used for a variety of purposes, from chemical removal of material (wet etching) to deposition of material (electroplating), to sample cleaning, to the creation of patterns on the surface using optical lithography techniques. This particular equipment is controlled because of its high etch selectivity ratio, which is important to IC fabrication at more advanced technology nodes.

ECCN 3B001.d historically was applied to control deposition equipment that was then decontrolled because of technological advancements and foreign availability. The paragraph was reserved but is now being utilized again to control semiconductor wafer fabrication deposition equipment used today to manufacture advanced-node ICs. Contacts and lower interconnects are the smallest and most critical wiring layers delivering current to transistors, and due to continued geometric scaling of logic semiconductors, these metal layers now create a bottleneck to transistor performance. The items added to ECCN 3B001.d.3, d.4, d.5, and d.8 include advanced fabrication equipment designed for metal deposition of the barrier layer, liner layer, seed layer, or cap layer of metal interconnects.

ECCN 3B001.d.1 (former ECCN 3B090.a.1) is revised by adding the word ''designed,'' to better focus controls. This rule also revises the control to include ''cobalt (Co) electroplating or cobalt electroless-plating deposition'' in response to feedback from public comments. Electroplating has long been used to deposit metal on substrates in the semiconductor industry. In advanced-node IC manufacturing, a barrier layer such as cobalt (Co) is necessary to block the diffusion of copper into the surrounding material.

ECCN 3B001.d.2 (former ECCN 3B090.a.2) is revised by adding the phrase ''equipment designed for'' and replacing the phrase ''capable of'' with ''by performing,'' to better focus the controls. The phrase ''capable of'' was replaced because BIS determined the phrase could unintentionally capture equipment used to produce logic ICs at legacy technology nodes. Using ''by performing'' more precisely controls equipment that is used to produce logic ICs at the advanced technology node. Therefore, consistent with BIS's focused approach to these controls and to aid with export control compliance, these controls are based on the designed performance of the equipment. In addition, periodic table symbols for elements are also added throughout this ECCN. Finally, BIS revised the scope of this control to provide greater specificity on the types of tungsten-based capabilities subject to control.

ECCN 3B001.d.3 (former ECCN 3B090.a.3) is revised by replacing ''capable of fabricating'' with ''designed to fabricate,'' for the reasons noted above in relation to ECCN 3B001.d.2, and by replacing ''within'' with ''by multistep processing within a single chamber.''

ECCN 3B001.d.3.a (former ECCN 3B090.a.3.a) is revised by replacing ''depositing a layer using'' with ''deposition of a tungsten layer, using an organometallic tungsten (W) compound'' and replacing ''between'' with ''greater than'' and ''less than.'' Subparagraph 3B001.d.3.b (former ECCN 3B090.a.3.b) is revised by replacing ''conducting a'' with ''a plasma process using hydrogen (H_2),'' and replacing ''where the chemistries include'' with ''including hydrogen and nitrogen (H_2 +N_2) or ammonia (NH_3),'' and adding periodic table symbols or names for elements in this subparagraph.

ECCN 3B001.d.4 contains descriptive introductory text that includes two common parameters that apply to all the paragraphs in ECCN 3B001.d.4, which establishes control of SME or systems designed for multistep processing in multiple chambers or stations and maintaining high vacuum (equal to or less than 0.01 Pa) or inert environment between process steps. Introductory text in ECCN 3B001.d.4.a (former ECCN 3B090.a.4) is revised by replacing ''capable of'' with ''designed to fabricate,'' for the reasons noted above in relation to ECCN 3B001.d.2. Clarifications are made to ECCN 3B001.d.4.a.1 through a.3 (former ECCN 3B090.a.4.a, a.4.b, and a.4.c), such as adding periodic table symbols or chemistry formulas and replacing ''between'' with ''greater than'' and ''less than.''

ECCN 3B001.d.4.b (formerly ECCN 3B090.a.5) is revised by cascading the control text into a header and two subparagraphs for easier readability and clarity. A note is retained that followed what had been ECCN 3B090.a.5 and indicating that the control does not apply to equipment that is non-selective.

ECCN 3B001.d.4.c (formerly ECCN 3B090.a.8) is revised by replacing ''capable of'' with ''designed for,'' for the reasons noted above in relation to ECCN 3B001.d.2 and tightening up other text referring to pressure and temperature in the related items paragraphs.

ECCN 3B001.d.4.d (formerly ECCN 3B090.a.9) controls equipment designed to fabricate copper interconnects, including those performing all the following processes: deposition of cobalt or ruthenium layer using an organometallic compound (see ECCN 3B001.d.4.d.1) and deposition of a copper layer using a physical vapor deposition technique (see ECCN 3B001.d.4.d.2).

ECCN 3B001.d.5 is added to control equipment designed for plasma enhanced chemical vapor deposition of carbon hard masks meeting specified parameters. As the feature size of semiconductor devices decreased, a carbon hard mask film with higher etching selectivity and higher transparency is required for manufacturing.

ECCN 3B001.d.6 (formerly ECCN 3B090.a.10) is revised to add ''Atomic Layer Deposition (ALD)'' to clarify the type of equipment that is designed for area selective deposition of a barrier or liner using an organometallic compound. Atomic layer deposition (ALD) equipment has become a critical enabler of today's most advanced devices and the industry's transition to 3D architectures. On the wafer substrate, the ALD processes build up material directly, a fraction of a monolayer at a time to build the thinnest, most uniform films possible. The self-limiting nature of the processes and the related capacity for conformal deposition are the basis for its importance as a 3D scaling enabler, such as in the fabrication of 3D DRAM, 3D NAND, and FinFET/GAAFET logic.

The ECCN 3B001.d.7 (formerly ECCN 3B090.a.11) control for Atomic Layer Deposition (ALD) equipment is revised by replacing the words ''capable of'' with ''designed to'' for the reasons noted above in relation to ECCN 3B001.d.2. BIS also revised the control to remove ''cobalt,'' which is addressed by other revisions in ECCN 3B001.d.2. Further, BIS removed the phrase ''void free fill'' in favor of ''fill an entire interconnect'' to clarify that equipment designed only for ALD of a tungsten layer (rather than to fill an entire interconnect) or for ALD in channels of specified width) is not controlled. BIS also removed the phrase ''having an aspect ratio greater than 5:1.''

ECCN 3B001.d.8 (formerly ECCN 3B090.a.7) controls certain ALD equipment of 'work function metals,' however the parameters are clarified to be more specific. A technical note that defines 'work function metal' is moved to this paragraph but remains unchanged.

ECCN 3B001.d.9 is added to establish control of spatial ALD equipment having a wafer support platform that rotates around an axis having any of the following: a spatial plasma enhanced ALD mode of operation, a plasma source, or a plasma shield or means to confine the plasma to the plasma exposure process region. These features help reduce unwanted particles in the deposition process to a degree needed for the fabrication of advanced-node ICs.

ECCN 3B001.d.10 is added to establish control of equipment designed for ALD or chemical vapor deposition (CVD) of plasma enhanced low fluorine tungsten films. This equipment is critical in filling voids in advanced-node device structures with higher and increasingly narrow aspect ratios, which minimizes resistance and improves performance.

ECCN 3B001.d.11 is added to control equipment designed to deposit a metal layer and maintain a specified vacuum or inert gas environment, including equipment designed for a chemical vapor deposition or cyclic deposition process by performing deposition of a tungsten nitride layer. This equipment is needed to achieve defect-free deposition of tungsten, which is critical to the production of advanced-node ICs.

ECCN 3B001.d.12 is added to establish control of equipment designed for depositing a metal layer and maintaining a specified vacuum or inert gas environment, including equipment designed for selective tungsten growth without a barrier and equipment designed for selective molybdenum growth without a barrier. This equipment enables the manufacture of contacts with significantly lower resistivity, which is important to the fabrication of advanced-node ICs.

ECCN 3B001.d.13 is added to establish control of equipment designed for depositing a ruthenium (Ru) layer using an organometallic compound, while maintaining the wafer substrate at

a specified temperature. The deposition of a Ru layer under the specified conditions is important to achieving lower resistivity interconnects needed for the fabrication of advanced-node ICs.

ECCN 3B001.d.14 is added to control deposition equipment assisted by remotely generated radicals enabling the fabrication of a silicon and carbon containing film having specified properties. This specific process promotes good cycle stability of the film, which is important in the fabrication of advanced-node ICs.

ECCN 3B001.d.15 is added to control equipment designed for void free plasma enhanced deposition of a low-k dielectric layer in gaps between metal lines with specified parameters. A low-k CVD barrier film reduces the dielectric constant (k) of copper damascene structures to lower capacitance (power consumption), which enables fabrication of more advanced integrated circuits.

ECCN 3B001.d.16 is added to control deposition equipment with capabilities similar to those described in new ECCN 3B001.d.14, but which also meets certain temperature requirements, has the capability to hold multiple vertically stacked wafers, and has certain injector configurations, as specified.

ECCN 3B001.f.1 ''Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods'' is revised to establish controls in ECCN 3B001.f.1.b for equipment that have a light source wavelength equal to or longer than 193 nm meeting certain parameters, and adding two paragraphs under ECCN 3B001.f.1.b.2 to capture items with a maximum 'dedicated chuck overlay' less than or equal to 1.50 nm, or greater than 1.50 nm but less than or equal to 2.4nm, respectively. The technical note for ECCN 3B001.f.1.b is also revised to add a definition for 'dedicated chuck overlay.' The equipment meeting the parameters in ECCN 3B001.f.1.b.2.b is not eligible for *de minimis* treatment with one exception as set forth in § 734.4(a)(3) of the EAR as described below in section C.5. This change recognizes the advancement of the state-of-the-art in immersion lithography equipment and the corresponding decrease in minimum resolvable feature (MRF) size of advanced-node ICs. This equipment is necessary to improve resolution by reducing the total edge placement error, which is a measure of the accuracy between pattern overlays on the same exposure mask level. The definition for ''Extreme Ultraviolet'' (''EUV'') is moved from the technical note located after ECCN 3B001.j.2 to § 772.1 as an EAR defined term, because the term is used in ECCNs 3B001, 3B002, and 3D003. The addition of this term to § 772.1 is described below in section C.12.

ECCN 3B001.k is added to establish controls on equipment designed for ion beam deposition or physical vapor deposition of multi-layer reflector for ''EUV'' masks. ECCN 3B001.l is added to establish controls on ''EUV'' pellicles and ECCN 3B001.m is added to establish controls on equipment for manufacturing ''EUV'' pellicles. Masks, reticles, and associated pellicles are critical components for EUV lithography, which itself enables fabrication of very small feature sizes used at more advanced production nodes. Masks for EUV lithography have many features that uniquely suit them for EUV lithography, *e.g.,* they have a low thermal expansion low defect glass blank and operate in the reflection mode, whereas masks for 193 nm and 248 nm lithography technology operate in the transmission mode.

ECCN 3B001.n is added to establish controls on equipment designed for coating, depositing, baking, or developing photoresist formulated for ''EUV'' lithography, which as noted above is critical for production of advanced-node ICs.

ECCN 3B001.o is added to establish controls of semiconductor wafer fabrication annealing equipment with specified parameters. In the case of silicon wafers, annealing is often used to improve the surface roughness and crystal quality of the wafer. It can also be used to remove defects and impurities from the surface of the wafer. This removal is even more critical in the production of wafers used to fabricate advanced-node ICs given their smaller feature sizes.

ECCN 3B001.p is added to establish control of three types of semiconductor wafer fabrication cleaning and removal equipment.—Frequent removal of contaminants and wafer cleansing is critical during the manufacture of advanced-node integrated circuits. At advanced technology nodes any contaminant, unwanted particles or debris, in the nanometer range, can easily cause short circuits that would disable an IC.

ECCN 3B001.p.1 controls equipment designed for removing polymeric residue and copper oxide film and enabling deposition of copper metal in a vacuum (equal to or less than 0.01 Pa) environment. BIS notes that this control does not capture deposition equipment that is not elsewhere specified, but which may also have the capability described in the control.

ECCN 3B001.p.2 controls single wafer wet cleaning equipment with surface modification drying. BIS notes that this control is not intended to capture planarization equipment that may incorporate ''cleaning'' and ''drying'' steps as part of its overall process. Planarization is a process used in semiconductor manufacturing to polish wafers, rather than to clean wafers.

ECCN 3B001.p.3 controls equipment designed for dry surface oxide removal preclean or dry surface decontamination. As with ECCN 3B001.p.1, BIS notes that this control does not capture deposition equipment not elsewhere specified, but which may also have the capability described in the control. However, BIS notes that any components or attached chambers providing such capability would be controlled when exported, reexported, or transferred (in-country) as a separate item.

2. Revisions to ECCN 3B002

The heading to ECCN 3B002 is revised by adding ''or inspection'' before equipment and ''or inspecting'' after testing because inspection equipment is added to this ECCN. License Exception LVS eligibility is revised to remove eligibility for semiconductor manufacturing equipment specified in ECCN 3B002.b and c. Only license exceptions found in § 740.2(a)(9) of the EAR may be used for specified semiconductor manufacturing equipment such as this. Former paragraph 3B002.c is redesignated as paragraph 3B002.b and new paragraph 3B002.c is added to establish control of inspection equipment designed for ''EUV'' mask blanks or ''EUV'' patterned masks. Semiconductor inspection tools increase production throughputs by optimizing processes and improving quality and yields, and specialized versions of these tools are required for inspection at advanced technology nodes enabled by EUV, and therefore warrant NS and RS controls for EUV (high-end) masks. The definition for ''Extreme Ultraviolet'' (''EUV'') that this rule adds to § 772.1, as described below in section C.12, applies to that term as it is used in ECCN 3B002.c.

3. Removal of ECCN 3B090 and Conforming Changes

BIS added ECCN 3B090 to the CCL in the October 7 IFR. This rule removes ECCN 3B090 because it was determined that controls on SME should be placed with similar equipment specified in previously existing ECCNs, *e.g.,* 3B001, for ease of compliance, enforcement, and because BIS anticipates that these items will be the subject of future formal

multilateral controls, as discussed above.

Licenses issued by BIS for equipment that was classified under ECCN 3B090, but is now under ECCN 3B001, remain valid until expiration, unless suspended or revoked. For export clearance purposes for licenses involving ECCN 3B090 items, exporters must use the new 3B001, consistent with § 750.7(c)(1)(viii). This concept also applies to all other ECCN redesignations that occur as a result of this SME IFR. Exporters must list the new ECCN classification on any export clearance documentation filed after the effective date of this rule.

4. Revisions to ECCNs 3D001, 3D002, 3D003, and 3E001

The license requirement tables of ECCNs 3D001, 3D002, and 3E001 are revised following the same pattern as the table revisions for ECCNs 3B001 and 3B002, described above. For all three ECCNs, new NS and RS license requirements rows are added for software and technology related to newly added SME in ECCN 3B001.a.4, c, d, f.1.b and k to p when destined to or within Macau or destinations specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. The related changes to §§ 742.4(a)(4) and 742.6(a)(6) of the EAR are discussed in section C.8 and C.9, respectively. All items in these ECCNs, including these newly listed SME, are also controlled for AT reasons and subject to an AT:1 license requirement. The License Requirement table is revised to identify these reasons for control.

Because of the addition of RS controls, in ECCNs 3D001 and 3D002, License Exception TSR eligibility is revised to include ''N/A for RS,'' as TSR eligibility is for items that require a license for NS reasons only. For ECCN 3E001, TSR eligibility is also revised for the same reasons, but adds N/A for NP and RS.

In addition to the changes described above, the heading of ECCN 3D002 is revised by expanding the scope to include newly added SME in ECCN 3B001.k to p. In addition, the reporting requirement is removed, as ECCN 3D002 does not appear in supplement no. 2 to part 774—Sensitive List.

The heading of ECCN 3D003 is revised by adding double quotes around the newly defined term ''EUV,'' because that term is defined now defined in § 772.1 of the EAR.

This rule also makes an additional clarification to ECCN 3E001. In ECCN 3E001, this rule revises the Regional Stability control in the License Requirements section Control(s) column to remove the phrase ''or ''software'' specified by ECCN 3D001 (for ECCN 3A090 or 3B090 commodities)'' because it is no longer needed. This rule is removing technology controls for ECCN 3D001 software (for ECCNs 3A090 and 3B090 commodities) because the technology related to software is simply source code, which is generally classified as software, so there is no need for a separate technology control under ECCN 3E001 for ECCN 3D001 software.

Only license exceptions found in § 740.2(a)(9) of the EAR may be used for technology or software for specified semiconductor manufacturing equipment.

5. Addition of § 734.4(a)(3) 0% De Minimis Rule for ECCN 3B001.f.1.b.2.b Items

This rule revises § 734.4 by adding a new paragraph (a)(3) to specify that there is no *de minimis* level for lithography equipment and ''specially designed'' items therefor meeting the parameters in ECCN 3B001.f.1.b.2.b when destined for use in the ''development'' or ''production'' of ''advanced-node integrated circuits,'' except when the country from which the foreign-made item was originally exported or reexported has the item listed on its export control list. In other words, if the other country maintains an equivalent export control for equipment meeting the parameters of ECCN 3B001.f.1.b.2.b, BIS does not need to impose additional controls on the export from abroad, or the reexport or transfer (in-country) of these foreign-made items. BIS is adding a footnote with information concerning any countries that maintain an equivalent export control.

Retention of BIS Jurisdiction

For exports from abroad from any other country, and subsequent reexports or transfers to or within any other country of items that were exported from abroad from a country that does not maintain equivalent controls, BIS retains jurisdiction over such foreign-made equipment to protect U.S. national security and foreign policy interests.

6. Revisions to the Temporary General License in Supplement no. 1 to Part 736—General Orders

Effective November 17, 2023, this rule revises paragraph (d) of (General Order No. 4) under supplement no. 1 to part 736 by removing the October 7 IFR TGL and adding a new TGL.

This SME IFR adds a new TGL under paragraph (d)(1) for companies headquartered in the United States or a destination specified in Country Group A:5 or A:6 that send CCL items to manufacturing facilities in a Country Group D:5 country or Macau for the ''development'' or ''production'' of ''parts,'' ''components,'' or ''equipment'' of certain Category 3B ECCNs specified in § 744.23(a)(4). The TGL overcomes the license requirements described in § 744.23(a)(4) (former § 744.23(a)(2)(v)) when (1) the items exported, reexported, or transferred (in-country) are subject to the EAR, specified on the CCL, and controlled only for AT reasons, and (2) the items are exported, reexported, or transferred (in-country) at the direction of a company that is headquartered in the United States or a destination specified in Country Groups A:5 or A:6, and not majority-owned by a company headquartered in either Macau or a destination specified in Country Group D:5. The purpose of this TGL is to provide SME producers in the United States and Country Groups A:5 and A:6 countries additional time to identify alternative sources of supply outside of arms-embargoed countries, or to acquire individually validated licenses to continue manufacturing 'front-end integrated circuit ''production'' equipment' and related ''parts'' and ''components'' in such countries. In keeping with that goal, this TGL is valid from November 17, 2023, through December 31, 2025.

As noted below in section C.11, the overarching purpose of § 744.23(a)(4) (former § 744.23(a)(2)(v)) is to inhibit the indigenization of 'front-end integrated circuit ''production'' equipment' and related ''parts'' and ''components'' that would render the end-use controls in § 744.23(a)(2) obsolete. BIS has narrowed the scope of § 744.23(a)(4) to focus on the types of equipment (*i.e.,* front-end) that are most likely relevant to the ''production'' of ''advanced-node integrated circuits,'' which may include node-agnostic tools specified in ECCNs controlled for only AT reasons. As noted in section C.11, BIS welcomes comment on whether there are ECCNs that should be excluded from the end-use scope because they are exclusively used in the ''production'' of legacy-node integrated circuits.

In keeping with that goal, new paragraph (d)(4) (End-use and end-user restrictions) states that the TGL cannot be used for the indigenous ''development'' or ''production'' of Category 3B tools in either Macau or a destination specified in Country Group D:5, *i.e.,* where the ''part,'' ''component,'' or ''equipment'' is ''developed'' or ''produced'' at the

direction of an entity that is headquartered in either Macau or a destination specified in Country Group D:5. Paragraph (d)(4)(i) also specifies that the TGL does not overcome the license requirements of § 744.11 or § 744.21 of the EAR when an entity listed in supplements no. 4 or 7 to part 744 is a party to the transaction as described in § 748.5(c) through (f) of the EAR, or when there is knowledge of any other prohibited end use or end user.

Lastly, new paragraph (d)(5) (Recordkeeping requirements) specifies that all exports, reexports, transfers (in-country), and exports from abroad shipped under the authorization of the TGL are subject to the recordkeeping requirements of part 762. Paragraph (d)(5) states that the records subject to this recordkeeping requirement include but are not limited to directives to the parties that are eligible to use this TGL and a list of the parties that have received directives. Each party that issues or acts upon a directive is responsible for keeping a record of that directive.

7. Revisions to § 740.2 License Exception Restrictions

This rule also restructures § 740.2(a)(9) by addressing SME in paragraph (a)(9)(i) and advanced computing and supercomputer items in paragraph (a)(9)(ii). This rule also revises § 740.2(a)(9) by replacing references to 3B090 with references to new ECCNs 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c, or associated software and technology in ECCN 3D001, 3D002, 3D003, or 3E001. As a result, these items remain ineligible for all license exceptions other than License Exception GOV. This SME IFR expands the availability of License Exception GOV for both SME and advanced computing and supercomputer items to all of the United States Government under § 740.11(b), consistent with policy that GOV should be available for U.S. Government use or for those acting for or on behalf of the U.S. Government.

In addition, for ECCNs 3A090 and 4A090 items, as requested in public comments on the October 7 IFR, this SME IFR also amends § 740.2(a)(9)(ii) to add eligibility for License Exception TMP under § 740.9(a)(6), so that eligible companies may temporarily send foreign-produced advanced computing items for inspection, test, calibration, and repair to Macau or destinations specified in Country Group D:5, as well as transfer within those destinations for inspection, test, calibration, and repair. Not including License Exception TMP for § 740.9(a)(6) in the October 7 IFR was an inadvertent oversight, which as the commenters correctly noted would undermine the usefulness of License Exception RPL, which was included in the October 7 IFR for these items.

8. Addition and Reformatting of § 742.4 National Security Controls

This rule amends § 742.4 by reformatting paragraph (a) for easier navigation and readability, as well adding a new paragraph (b)(2) and paragraph (d) for license exception guidance. Specifically, a sentence is added to the introductory text of paragraph (a) to explain the basis for most of the items controlled for National Security reasons on the CCL. Paragraph (a) is now cascaded into separate paragraphs for ease of reading and navigation. Paragraph (a)(1) describes NS:1 license requirements, paragraph (a)(2) describes NS:2 license requirements, paragraph (a)(3) describes NS-related license requirements for ECCN 6A003.b.4.b, and paragraph (a)(4) is added to describe NS related license requirements for certain SME and associated software and technology, which is for the newly added SME in ECCNs 3B001 and 3B002, associated software in ECCNs 3D001 and 3D002, and associated technology in 3E001. A license is required for exports and reexports to either Macau or destinations specified in Country Group D:5 of commodities specified in ECCNs 3B001.a.4, c, d, f.1.b, k to p, and 3B002.b and c and their associated software and technology.

Paragraph (b) is amended by adding an introductory sentence that includes former paragraph (b)(3) and explains that if a license application meets the criteria of more than one of the paragraphs in (b), then the most restrictive license policy will be applied. This rule also adds subject headings to each license policy paragraph to assist with navigation within paragraph (b). This rule moves the text from paragraph (b)(2) to the end of paragraph (b)(1)(i), because this further explains license review policy for exports and reexports to destinations in Country Group D:1. The license policy in former paragraph (b)(1)(iii) for 9x515 to China and destinations in Country Group E:1 is combined with the license policy for ''600 series'' items in former paragraph (b)(1)(ii), because these destinations are also in Country Group D:5 and the corresponding licensing policy, consistent with § 126.1 of the International Traffic in Arms Regulations (ITAR) (22 CFR chapter I, subchapter M) for such destinations, would be a policy of denial. The combined license policy is now in paragraph (b)(1)(ii).

This rule adds a new paragraph (b)(2) indicating license applications will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR. License applications for items specified in paragraph (a)(4) will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR.

Paragraph (c), regarding the applicability of contract sanctity, has been revised to note that contract sanctity will be available as a factor for consideration for license applications involving the new SME items identified in paragraph (a)(4) of this section.

The previously reserved paragraph (d) is now a paragraph for license exceptions guidance. This paragraph is added to provide references to specific license exceptions that are for national security-controlled items, as well as other useful license exceptions for national security items. It also cross-references the restrictions that apply to all license exceptions in § 740.2 of the EAR.

9. Revision of § 742.6 Regional Stability

Section 742.6(a)(6)(i) is revised to remove references to ECCN 3B090 and associated software and technology to conform to the removal of that ECCN from the CCL. See section C.3 of this rule for the description of the removal of 3B090 and addition of items to 3B001, 3B002, and associated software and technology ECCNs. This SME IFR separates from paragraph (a)(6)(i) sentences about exports from abroad from China or Macau and adds them to a new paragraph (a)(6)(ii). In addition, the deemed export/reexport paragraph in former paragraph (a)(6)(ii) is now redesignated as paragraph (a)(6)(iii).

BIS specifically seeks public comment on the applicability of deemed exports and deemed reexports in paragraph (a)(6)(iii). Commenters are asked to provide feedback regarding the impact of this provision on their business and operations, in particular, what if any impact companies would experience if the deemed export and deemed reexport provision was removed and a license were to be required. Commenters are also asked to provide guidance on what if any practices are utilized to safeguard technology and intellectual property and the role of foreign person employees in obtaining and maintaining U.S. technology leadership.

Lastly, this rule revises the license review policy under paragraph (b)(10) to

harmonize the destination scope to Macau and destinations specified in Country Group D:5 and state that the license review will be consistent with § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR.

10. Revision of § 744.6 Activities of ''U.S. Persons''

Paragraph (c) is restructured by consolidating the nine former paragraphs (c)(2)(i) through (ix), which included redundant text, into three paragraphs (c)(2)(i) through (iii). Paragraph (c)(2) now captures the types of prohibited activities, *i.e.,* shipping, transmitting, or transferring (in-country), applicable to the destinations and end uses described in three paragraphs (c)(2)(i) through (iii). A commenter asked whether knowledge of a violation is a requirement to trigger the license requirements under § 744.6, and in response to this comment, BIS is clarifying this by adding ''if you know your export, reexport, or transfer (in-country) meets any of the specified activities described in paragraphs (c)(2)(i) through (iii) of this section, then'' to the paragraph (c)(2) introductory text to make this point.

Other paragraph specific changes are described below.

a. *Revisions related to former paragraphs (c)(2)(i) through (iii) regarding semiconductor* ''*development*'' *and* ''*production*'' *activities and related exclusions in paragraph (d).*

Section 744.6(c)(2)(i) and (ii) (former paragraphs (c)(2)(i) through (vi)) are revised to clarify the types of end uses captured by the controls, as well as the types of ''facilities'' where a prohibited end use must occur. First, the phrase ''that fabricates'' is replaced with ''where ''production'' . . . occurs.'' Second, the phrase ''semiconductor fabrication'' is removed and therefore no longer qualifies the term ''facility.'' BIS opted to leverage the existing defined term ''production'' rather than create a new defined term for ''fabrication.'' These changes are intended to retain BIS's focus on specific ''facilities'' (*i.e.,* buildings) at locations that may maintain multiple production lines at different production technology nodes, not all of which may ''produce'' ''advanced-node integrated circuits.'' However, the changes also allow more flexibility in identifying relevant facilities where ''production'' may occur beyond a fabrication facility, which some in industry interpreted narrowly to encompass only a clean room or production floor. In contrast to the term ''fabrication,'' the term ''production'' better captures facilities where important late-stage product engineering or early-stage manufacturing steps (among others) may occur, which aligns with BIS's intended focus. In addition, because the controls still capture ''development'' activities that may occur at the same ''facility'' where ''production'' of ''advanced-integrated circuits'' occur, this change also better captures ''development'' and product engineering activities at research and development (R&D) fabrication ''facilities'' that may not engage in volume manufacturing of integrated circuits. On the other hand, BIS also clarifies that a ''facility'' where only ''development'' activities occur would not fall within the scope of controls, primarily because this could over-capture ''facilities'' engaged exclusively in design or other forms of ''development'' of consumer items (*e.g.,* smartphone ICs) that will be ''produced'' outside of China or at approved ''facilities'' in China and therefore do not necessarily warrant control. BIS welcomes comments on the implications of these changes relative to the objectives and considerations stated throughout this IFR.

To enhance readability and simplify the structure of the controls under paragraphs (c)(2)(i) and (ii) (former paragraphs (c)(2)(i) through (vi)), BIS has moved and clarified the criteria for three types of ''advanced-node integrated circuits'' to a new definition in § 772.1 of the EAR and has added a heading to each paragraph. The term servicing in § 744.6(c) is revised to add the term installation, so it is clear that the prohibition under these two paragraphs on servicing also extends to installing any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of ''advanced-node ICs'' or specified SME.

b. *Revisions to former paragraphs (c)(2)(vii) through (ix) related to certain SME not subject to the EAR.*

Section 744.6(c)(2)(iii) is revised to remove references to ECCN 3B090 and associated software and technology to conform with the removal of that ECCN from the CCL. See above for the description of the removal of ECCN 3B090 and addition of items to ECCNs 3B001, 3B002, and associated software and technology ECCNs, found in sections C.3, C.1, and C.2, respectively. The country scope is changed from ''PRC and Macau'' to ''either Macau or a destination specified in Country Group D:5,'' which is explained in section C. Specifically, paragraph (c)(2)(iii) of § 744.6 is revised to add references to ECCN 3B001.a.4, c, d, f.1.b, k to p; 3B002.b and c; 3D001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c); 3D002 (for 3B001 a.4, c, d, f.1.b, k to p, 3B002.b and c); or 3E001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c).

c. Revisions related to paragraph (d) license exceptions and exclusions.

Section 744.6(d) is amended by revising the heading from ''exceptions'' to ''exceptions and exclusions,'' as well as adding headings to the paragraphs in (d) for easier readability and navigation. This rule also moves the text of paragraph (d)(1) to the introductory paragraph, where it continues to state that paragraphs (b)(1) through (4) are not eligible for license exceptions. The paragraph is also amended to indicate that no license exceptions are available for § 744.6(c)(2). The license exception that was formerly in paragraph (d)(2) has been converted into an exclusion in paragraph (d)(2). Paragraph (d)(1) is now reserved. In addition, this rule differentiates between exclusions from the license requirements of this section and license exceptions found in part 740 of the EAR.

Also consistent with revisions to related sections of § 744.23, BIS has added an exclusion under paragraph (d)(3) to limit the scope of ''production'' steps captured by paragraphs (c)(2)(i) and (ii). In line with BIS's response in its Jan. 25, 2023 FAQ II.A1, this exclusion excludes ''back-end'' production steps, such as assembly, test, or packaging steps that do not alter the technology level of an integrated circuit.

Additionally, this rule adds an exclusion that applies to paragraphs (c)(2)(i) through (iii) of this section in paragraph (d)(4) for natural ''U.S. persons'' employed or working on behalf of a company headquartered in the United States or a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity that is headquartered in Macau or a destination specified in Country Group D:5. This exclusion is intended to ease the compliance burden and corresponding disincentive to employ U.S. persons in activities for which governments of closely allied destinations maintain or may establish appropriate controls. This rule also adds a new Note to paragraph (d)(4) to provide additional context on when activities of ''U.S. persons'' are excluded, including providing guidance on how these criteria apply to ''U.S. persons'' working as freelancers for companies headquartered in the United States or in a destination specified in Country Group A:5 or A:6, on behalf of a company not headquartered in the United States or in a destination

specified in Country Group A:5 or A:6, or some combination of these scenarios.

Finally, this rule adds an exclusion that applies to paragraph (c)(2)(iii) of this section in paragraph (d)(5) for servicing (including installation) activities unless such activities occur at a facility where ''production'' of ''advanced-node integrated circuits'' occurs. This will exclude servicing (including installation) of items specified in the ECCNs listed by paragraph (c)(2)(iii), when in a facility that does not produce ''advanced-node integrated circuits'' to avoid restricting servicing (including installation) at legacy-node facilities. This type of provision is included to ensure the controls remain focused on transactions and activities of national security concern.

d. Revisions related to paragraph (e) license review standards.

Section 744.6(e) is amended by revising paragraph (e)(3) to focus on countries of concern and provide an additional exclusion for the presumption of denial policy. BIS will review applications with a presumption of denial when they include destinations in Macau and destinations in Country Group D:5, except when there is a foreign-made item available that is not subject to the EAR and has the same function as an item subject to the EAR, which will be reviewed with a presumption of approval. All other applications will be considered on a case-by-case basis taking into account factors including technology level, customers, and compliance plans.

11. Revisions of § 744.23 ''Supercomputer,'' ''Advanced-Node Integrated Circuits,'' and Semiconductor Manufacturing Equipment End Use Controls

a. *General Revisions and Context for These Changes.*

BIS received comments from the public to simplify the format of § 744.23 by combining the product scope paragraphs with the end-use scope paragraphs. BIS agrees and has done this. Here is a table to help the public find the new locations of paragraphs within § 744.23.

§ 744.23 ''SUPERCOMPUTER,'' ''ADVANCED-NODE INTEGRATED CIRCUIT,'' AND SEMICONDUCTOR MANUFACTURING EQUIPMENT END-USE CONTROLS

Topic	Prior to this rule	In this rule
''Supercomputer''	(a)(1)(i) and (ii)	(a)(1)(i).
	(a)(2)(i)	(a)(1)(ii)(A).
	(a)(2)(ii)	(a)(1)(ii)(B).
''Advanced-node ICs''	(a)(1)(iii) and (a)(2)(iii)	(a)(2)(i).
	(a)(1)(iv) and (a)(2)(iv)	(a)(2)(ii).
Reserved	N/A	(a)(3).
Semiconductor Manufacturing Equipment (SME)	(a)(1)(v) and (a)(2)(v)	(a)(4).
Exclusions	None	(a)(5).
Is informed by BIS	(b)	(b).
License Exceptions	(c)	(c).
License review standards	(d)	(d).

The introductory text of paragraph (a) in § 744.23 is revised to reference the new exclusions in paragraph (a)(5) that apply to the license requirements of this section. Paragraphs (a)(1) and (2) are combined under three topical paragraphs: (a)(1) ''supercomputers,'' (a)(2) ''advanced-node ICs,'' and (a)(4) SME. This rule adds a new paragraph (a)(5) for an exclusion to the license requirements. Paragraphs (b) and (d) have not been amended. The country scope is changed from ''China and Macau'' to ''Macau or a destination specified in Country Group D:5'' throughout this section for reasons explained in section C of the preamble of this rule.

Paragraph (a)(2)(ii) (former paragraph (a)(1)(iv)) is also revised to replace the words ''and classified'' with ''specified,'' so that the public does not incorrectly conclude that one must formally submit a classification request to have the item classified by BIS to make a license requirement determination under this provision.

b. *Revisions related to paragraphs (a)(2)(i) and (ii) (former paragraphs (a)(2)(iii) and (iv)) regarding the* ''*development*'' *and* ''*production*'' *of ICs.*

Consistent with revisions described above to § 744.6, the phrase ''that fabricates'' is replaced with ''where ''production'' . . . occurs,'' and the phrase ''semiconductor fabrication'' is removed and therefore no longer qualifies the term ''facility.'' BIS opted to leverage the existing defined term ''production'' rather than create a new defined term for ''fabrication.'' These changes are intended to retain BIS's focus on specific ''facilities'' (*i.e.,* buildings) at locations that may maintain multiple production lines at different production technology nodes, not all of which may ''produce'' ''advanced-node integrated circuits.'' However, the changes also allow more flexibility in identifying relevant facilities where ''production'' may occur beyond a fabrication facility. For example, the term ''production'' better captures facilities where important late-stage product engineering or early-stage manufacturing steps (among others) may occur. In addition, because the controls still capture ''development'' activities that may occur at the same ''facility'' where ''advanced-integrated circuits'' are ''produced,'' this change also better captures ''development'' and product engineering activities at R&D fabrication ''facilities'' that may not engage in volume manufacturing of integrated circuits. On the other hand, BIS also clarifies that a ''facility'' where only ''development'' activities occur would not fall within the scope of controls, primarily because this could over-capture ''facilities'' engaged exclusively in ''design'' or other forms of ''development'' of consumer items (*e.g.,* smartphone ICs). BIS welcomes comments on the implications of these changes relative to the objectives and considerations stated throughout this IFR.

In addition, BIS has added an exclusion under paragraph (a)(5) to limit the scope of ''production'' steps captured by paragraphs (a)(2) (former paragraphs (a)(2)(iii) and (iv)). As relayed in BIS's Jan. 25, 2023, FAQ II.A.1, for purposes of § 744.23(a)(2), the term ''production'' does not apply to back-end steps, such as assembly, test, or packaging that do not alter the semiconductor technology level. If there is a question at the time of export, reexport, or transfer (in-country) about

whether a manufacturing stage is ''back-end'' or whether a back-end activity ''alter[s] the semiconductor technology level,'' you may submit an advisory opinion request to BIS pursuant to § 748.3(c) for clarification.

Further, to enhance readability and simplify the structure of the controls under paragraphs (a)(2) (former paragraphs (a)(2)(iii) and (iv)), BIS has moved and clarified the criteria for three types of ''advanced-node integrated circuits'' to a new definition in § 772.1 of the EAR.

Paragraphs (a)(1) through (4) are revised to add paragraph headings to make it easier for exporters, reexporters, and transferors to identify the scope of each of these paragraphs.

c. *Revisions related to paragraph (a)(4)(former paragraph (a)(2)(v)) regarding the* ''*development*'' *or* ''*production*'' *of SME.*

As noted above in response to public comments, BIS has narrowed the product scope of § 744.23(a)(4) to items subject to the EAR and specified on the CCL in supplement no. 1 to part 774 of the EAR, and it has narrowed the end-use scope of § 744.23(a)(4) to 'front-end integrated circuit ''production'' equipment' and other items specified in 3B ECCNs. The term 'front-end integrated circuit ''production'' equipment' does not include equipment used exclusively in back-end steps or other applications (*e.g.,* outside of integrated circuit ''production'') that do not alter the integrated circuit technology level. BIS welcomes comments on this revision, including identification of any specific items that warrant exclusion from the product scope or end use scope, *e.g.,* because they are exclusively used in the production of integrated circuits at legacy production technology nodes.

In addition, BIS has revised the scope of paragraph (a)(4) to exclude masks and other items specified in ECCNs 3B001.g, 3B001.h, 3B001.j, and 3B991.b.2. This exclusion will allow the export, reexport, and transfer (in-country) of items subject to the EAR destined for use in the ''development'' or ''production'' in either Macau and destinations specified in Country Group D:5 of masks and reticles in the specified ECCNs for fabricating ICs that are not ''advanced-node integrated circuits.'' Any item subject to the EAR, including one specified in these ECCNs, that is destined for use in the ''development'' or ''production'' in either Macau or destinations specified in Country Group D:5 of ''advanced-node integrated circuits,'' must still be assessed against the license requirements in § 744.23(a)(2).

ECCN 3B090 is also removed from the list of ECCNs in paragraph (a)(4), because the equipment controlled in that ECCN has been moved to ECCN 3B001, which is already listed in this paragraph.

d. *Exclusion*

BIS added an exclusion to § 744.23(a)(5) to limit the scope of ''production'' steps captured by paragraphs (a)(2)(i) and (ii). In line with BIS's response in its Jan. 25, 2023 FAQ II.A1, this exclusion excludes back-end production steps, such as assembly, test, or packaging steps that do not alter the technology level of an integrated circuit.

e. *License exception*

As noted above, BIS has narrowed the product scope of § 744.23(a)(4) (former § 744.23(a)(2)(v)) to items subject to the EAR and specified on the CCL. BIS considered adding license exception availability for License Exceptions TSU, RPL, and TMP for updates and repairs for SME equipment. However, we came to the conclusion that there isn't a need for License Exceptions TSU for paragraphs (a) (Operation technology and software) and (c) (Software updates) to allow for updates of items that were legally exported, reexported, or transferred (in-country) or License Exception TMP or RPL for repairs, because paragraph (a)(4) only captures ''development'' and ''production'' of SME. However, we welcome comments providing differing conclusions on this topic.

f. *License review standards*

There is a presumption of denial for Macau and destinations in Country Group D:5 of supplement no. 1 to part 740, with two exceptions. BIS is expanding the exception that could only be applied to one paragraph (a)(2)(i) (former paragraph (a)(2)(iii)) for ''end users in China or Macau that are headquartered in the United States or in a Country Group A:5 or A:6 country'' by allowing the exception to be applied to all paragraphs for end users in either Macau or a destination in Country Group D:5 that are headquartered in the United States or in a Country Group A:5 or A:6 country that are not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5. In addition, BIS is adding another exception that may be applied to all the paragraphs when there is a foreign-made item available that is not subject to the EAR and has the same function as the item subject to the EAR. Applications that meet either of these exceptions will be reviewed with a presumption of approval.

12. Addition to § 772.1 Definitions of Terms as Used in the EAR

Section 772.1 is revised to add a definition for the term ''extreme ultraviolet'' (''EUV''). To specify that this term means electromagnetic spectrum wavelengths greater than 5 nm and less than 124 nm. This rule adds this new defined term to § 772.1 because the term is used in ECCNs 3B001, 3B002 and 3D003.

Section 772.1 is also revised to add a definition for the term ''advanced-node integrated circuit.'' BIS added this definition to simplify the regulatory text in several places in §§ 744.6 and 744.23 that previously described the criteria for ''advanced'' ICs. As noted above under section C.11, this definition also now includes notes clarifying the meaning of ''production technology node'' for two types of ''advanced-node integrated circuits.''

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the ECRA, 50 U.S.C. 4801–4852. ECRA, as amended, provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects and distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility.

This interim final rule has been designated a ''significant regulatory action'' under Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. Although this rule makes important changes to the

EAR for items controlled for national security reasons, BIS believes that the added exclusions and narrowing of scope on key paragraphs outweigh the expansion in country scope, so that the overall burden will decrease. Therefore, the burdens and costs associated with the following information collections due to this rule are within the approved burden estimates for the following:

• 0694–0088, ''Simplified Network Application Processing System,'' which carries a burden- hour estimate of 29.6 minutes for a manual or electronic submission. The burden associated with Supplement no. 1 to part 736, General order 4, paragraph (d)(5) Temporary General License burden for recordkeeping is accounted for under 0694–0088 and is minimal due to the limited scope of those required to keep records (11 companies). The recordkeeping does not go beyond that which the exporter is already under obligation to keep pursuant to part 762 recordkeeping provisions of the EAR. There is a sunset clause on this requirement effective August 1, 2024, when this provision will be removed from the EAR.

• 0694–0137 ''License Exceptions and Exclusions,'' which carries a burden-hour estimate average of 1.5 hours per submission (Note: submissions for License Exceptions are rarely required);

• 0694–0096 ''Five Year Records Retention Period,'' which carries a burden-hour estimate of less than 1 minute; and

• 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden-hour estimate of 3 minutes per electronic submission.

Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* and using the search function to enter either the title of the collection or the OMB Control Number.

3. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. Although this rule is exempt from public comments, BIS is seeking them anyway on a number of issues.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 736

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 734, 736, 740, 742, 744, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Section 734.4 is amended by adding paragraph (a)(3) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(3) There is no *de minimis* level for equipment meeting the parameters in ECCN 3B001.f.1.b.2.b of the Commerce Control List in supplement no. 1 to part 774 of the EAR, when the equipment is destined for use in the ''development'' or ''production'' of ''advanced-node integrated circuits'' and the ''advanced-node integrated circuits'' meet the parameter specified in paragraph (1) of that definition in § 772.1 of the EAR, unless the country from which the foreign-made item was first exported [1] has a commodity specified on an export control list.

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[1] The Government of Japan added ArF-wet lithography equipment and other advanced semiconductor manufacturing equipment to its control list for all regions on July 23, 2023.

PART 736—GENERAL PROHIBITIONS

■ 3. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of May 8, 2023, 88 FR 30211 (May 10, 2023).

■ 4. Supplement no. 1 to part 736 is amended by revising paragraph (d) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(d) General Order No. 4: Exports, reexports, or transfers (in-country) authorized under the Temporary General License (TGL) specified under paragraph (d)(1) of this supplement must also comply with the terms and conditions under paragraphs (d)(4) through (5) of this supplement.

(1) *TGL—Less restricted SME ''parts,'' ''components,'' or ''equipment.''* This TGL only overcomes the license requirements described in § 744.23(a)(4) of EAR when:

(i) *Product scope.* The items subject to the EAR that are specified on the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR that are designated as controlled on the CCL only for AT reasons; and

(ii) *End-use scope.* The recipient is ''developing'' or ''producing'' ''parts,'' ''components,'' or ''equipment'' (as specified in § 744.23(a)(4) of the EAR) at the direction of a company that is headquartered in the United States or a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5.

(2) [Reserved]

(3) *Validity date.* The TGL under paragraph (d)(1) of this supplement expires on December 31, 2025.

(4) *End-use and end-user restrictions.*

(i) *Restrictions related to part 744 of the EAR.* The TGL under paragraph (d)(1) of this supplement does not overcome the license requirements of § 744.11 or § 744.21 of the EAR when an entity listed in supplements no. 4 or 7 to part 744 is a party to the transaction as described in § 748.5(c) through (f) of the EAR, or when there is knowledge

of any other prohibited end use or end user (other than the § 744.23 of the EAR provisions specified above in the TGL).

(ii) *Indigenous production.* The TGL under paragraph (d)(1) of this supplement cannot be used for the indigenous ''development'' or ''production'' of Category 3B tools in either Macau or a destination specified in Country Group D:5, *i.e.,* where the ''part,'' ''component,'' or ''equipment'' is ''developed'' or ''produced'' at the direction of an entity that is headquartered in either Macau or a destination specified in Country Group D:5.

(5) *Recordkeeping requirement.* All exports, reexports, transfer (in-country), and exports from abroad shipped under the authorization of this TGL are subject to the recordkeeping requirements of part 762 of the EAR. The records subject to this recordkeeping requirement include but are not limited to directives to the parties that are eligible to use this TGL and a list of the parties that have received directives. Each party that issues or acts upon a directive is responsible for keeping a record of that directive.

* * * * *

Supplement No. 1 to Part 736 [Amended]

■ 5. Effective on January 1, 2026, supplement no. 1 to part 736 is further amended by removing and reserving paragraph (d).

PART 740—LICENSE EXCEPTIONS

■ 6. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 7. Section 740.2 is amended by revising paragraph (a)(9) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a)* * *

(9)(i) The item is controlled under ECCN 3B001.a.4, c, d, f.1.b, k to p, 3B002.b or c, or associated software and technology in ECCN 3D001, 3D002, 3D003, or 3E001 and is being exported, reexported, or transferred (in-country) to or within either Macau or a destination specified in Country Group D:5 of supplement no. 1 to this part, and the license exception is other than License Exception GOV, restricted to eligibility under the provisions of § 740.11(b).

(ii) The item is identified in paragraph (a)(9)(ii)(A) or (B) of this section, is being exported, reexported, or transferred (in-country) to or within Macau or a destination specified in Country GroupD:5, and the license exception is other than: TMP, restricted to eligibility under the provisions of § 740.9(a)(6); RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to a destination specified in Country Group E:1 (see supplement no. 1 to this part); GOV, restricted to eligibility under the provisions of § 740.11(b); or TSU under the provisions of § 740.13(a) and (c). Items restricted to eligibility only for the foregoing license exceptions are:

(A) Controlled under ECCNs 3A090, 4A090, or associated software and technology in 3D001, 3E001, 4D090, and 4E001;

(B) A computer, integrated circuit, ''electronic assembly'' or ''component'' specified elsewhere on the CCL which meets or exceeds the performance parameters of ECCN 3A090 or 4A090.

* * * * *

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 8. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 9. Section 742.4 is amended by:
■ a. Revising paragraph (a);
■ b. Adding introductory text to paragraph (b);
■ c. Revising paragraphs (b)(1) and (2);
■ d. Removing and reserving paragraph (b)(3);
■ e. Revising paragraph (c); and
■ f. Adding paragraph (d).

The revisions and additions read as follows:

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other destination or combination of destinations that would prove detrimental to the national security (NS) of the United States. Generally, items on the Commerce Control List in supplement no. 1 to part 774 of the EAR that have a reason for control of NS are those that are also listed on the Wassenaar Arrangement's ''List of Dual-use Goods and Technologies,'' as well as some items listed on the Wassenaar Arrangement's ''Munitions List.'' ''600 series'' items and 9x515 items are also controlled for NS reasons.

(1) *National Security column 1 (NS:1).* A license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section.

(2) *National Security column 2 (NS:2).* A license is required to all destinations except those specified in Country Group A:1 (see supplement no. 1 to part 740 of the EAR), for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the ''License Requirements'' section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less.

(3) *6A003.b.4.b.* A license is required to all destinations except those specified in Country Group A:1 (see supplement no. 1 to part 740 of the EAR) for those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less and for cameras being exported or reexported pursuant to an authorization described in § 742.6(a)(2)(iii) or (v). The purpose of this control is to ensure that these items do not contribute to the military potential of destinations specified in Country Group D:1 (see supplement no. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States.

(4) *Certain semiconductor manufacturing equipment and associated software and technology.* A license is required for exports, reexports, and transfers (in-country) to or within either Macau or a destination specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR of items specified in 3B001.a.4, c, d, f.1.b, k to p; 3B002.b and c; 3D001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c); 3D002 (for 3B001 a.4, c, d, f.1.b, k to p, 3B002.b and c); or 3E001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c). The license requirements in this paragraph (a)(4) do not apply to deemed exports or deemed reexports.

(b) *Licensing policy.* Each application is reviewed in light of prevailing policies with full consideration of all aspects of the proposed transaction. When the license application meets the criteria of more than one licensing policy, then the most restrictive licensing policy will be applied. The review generally includes: an analysis of the kinds and quantities of items to be

shipped; their military or civilian uses; the unrestricted availability abroad of the same or comparable items; the country of destination; the ultimate end users in the country of destination; and the intended end use.

(1)(i) *Country Group D:1.* The policy for national security-controlled items exported or reexported to any destination except a destination specified in Country Group D:1 (see supplement no. 1 to part 740 of the EAR) is to approve applications unless there is a significant risk that the items will be diverted to a destination specified in Country Group D:1. Except for those countries described in paragraphs (b)(5) through (7) and (9) of this section, the general policy for exports and reexports of items to Country Group D:1 (see supplement no. 1 to part 740 of the EAR) is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.

(ii) *9x515 and ''600 series'' items.* When destined to a country listed in Country Group D:5 in supplement no. 1 to part 740 of the EAR, however, items classified under 9x515 or ''600 series'' ECCNs will be reviewed consistent with United States arms embargo policies in 22 CFR 126.1 (International Traffic in Arms Regulations (ITAR)). When destined to the People's Republic of China or a country listed in Country Group E:1 in supplement no. 1 to part 740 of the EAR, items classified under any 9x515 ECCN will be subject to a policy of denial.

(2) License applications for items specified in paragraph (a)(4) of this section will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR.

* * * * *

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section, except for applications for items in paragraph (a)(4) of this section. For paragraph (a)(4), contract sanctity provisions are available for contracts signed before October 18, 2023.

(d) *License exceptions.* Certain license exceptions are available only for national security items, such as License Exceptions GBS (see § 740.4 of the EAR) and TSR (see § 740.6 of the EAR), but other license exceptions may also be available for national security items, such as License Exception STA (see § 740.20 of the EAR) or license exceptions based on the facts of the transaction, such as License Exceptions TMP (see § 740.9 of the EAR) or GOV (see § 740.11 of the EAR). See part 740 of the EAR for a full list of license exceptions and § 740.2 of the EAR for license exception restrictions that apply to every license exception.

■ 10. Section 742.6 is amended by revising paragraphs (a)(6) and (b)(10) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(6) *RS requirement that applies to advanced computing and semiconductor manufacturing items*—(i) *Exports, reexports, transfers (in-country) to or within either Macau or Country Group D:5.* A license is required for items specified in ECCNs 3A090, 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c, 4A090, 5A992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090); and associated software and technology in 3D001 (for 3A090, 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c), 3D002 (for 3B001a.4, c, d, f.1.b, k to p, 3B002.b and c), 3E001 (for 3A090, 3B001a.4, c, d, f.1.b, k to p, 3B002.b and c), 4D090, and 4E001 (for 4A090 and 4D090), and 5D992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090) being exported, reexported, or transferred (in-country) to or within either Macau or a destination specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR.

(ii) *Exports from abroad originating in either China or Macau.* A license is also required for the export from abroad originating in either China or Macau to any destination worldwide of 3E001 (for 3A090) technology developed by an entity headquartered in either China or Macau that is the direct product of software subject to the EAR and is for the ''production'' of commodities identified in ECCNs 3A090, 4A090, or identified elsewhere on the CCL that meet or exceed the performance parameters of ECCNs 3A090 or 4A090, consistent with § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR.

(iii) *Deemed exports and reexports.* The license requirements in paragraphs (a)(6)(i) and (ii) of this section do not apply to deemed exports or deemed reexports.

* * * * *

(b) * * *

(10) *Advanced computing and semiconductor manufacturing items.* License applications for items specified in paragraph (a)(6) of this section will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR.

* * * * *

PART 744—CONTROL POLICY: END–USER AND END-USE BASED

■ 11. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

■ 12. Section 744.6 is amended by revising paragraphs (c)(2), (d), and (e)(3) to read as follows:

§ 744.6 Restrictions on specific activities of ''U.S. persons.''

* * * * *

(c) * * *

(2) Consistent with paragraph (c)(1) of this section, BIS is hereby informing ''U.S. persons'' that a license is required for the following activities, which could involve 'support' for the weapons of mass destruction-related end uses set forth in paragraph (b) of this section. Specifically, if you know your export, reexport, or transfer (in-country) meets any of the specified activities described in paragraphs (c)(2)(i) through (iii) of this section, then a license is required for shipping, transmitting, or transferring (in-country); facilitating the shipment, transmission, or transfer (in-country); or servicing (including installation) activities associated with any item, end use, or end user described in any of the following paragraphs:

(i) ''*Development*'' *or* ''*production*'' *of* ''*advanced-node ICs.*'' To or within China or Macau, any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of integrated circuits at a ''facility'' of an entity headquartered in either China or Macau, where ''production'' of ''advanced-node integrated circuits'' occurs;

(ii) *Category 3 items for* ''*development*'' *or* ''*production*'' *of* ''*advanced-node ICs.*'' To or within China or Macau, any item not subject to

the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the CCL that you know will be used in the ''development'' or ''production'' of integrated circuits at a ''facility'' of an entity headquartered in either China or Macau where ''production'' of integrated circuits occurs, but you do not know whether ''production'' of ''advanced-node integrated circuits'' occurs at such ''facility''; or

(iii) *Semiconductor manufacturing equipment.* To or within either Macau or a destination specified in Country Group D:5, any item not subject to the EAR and meeting the parameters of ECCNs 3B001.a.4, c, d, f.1.b, k to p; 3B002.b and c; 3D001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c); 3D002 (for 3B001 a.4, c, d, f.1.b, k to p, 3B002.b and c); or 3E001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c) regardless of end use or end user.

(d) *Exceptions and exclusions.* No license exceptions apply to the prohibitions described in paragraphs (b)(1) through (4) or paragraph (c)(2) of this section.

(1) [Reserved]

(2) *Exclusion to paragraphs (b)(5) and (c)(2)(iii) of this section.* Notwithstanding the prohibitions in paragraphs (b)(5) and (c)(2)(iii), ''U.S. persons'' who are employees of a department or agency of the U.S. Government may 'support' a 'military-intelligence end use' or a 'military-intelligence end user,' as described in paragraphs (b)(5) and (c)(2)(iii), if the 'support' is provided in the performance of official duties in furtherance of a U.S. Government program that is authorized by law and subject to control by the President by other means. This paragraph (d)(2) does not authorize a department or agency of the U.S. Government to provide 'support' that is otherwise prohibited by other administrative provisions or by statute. 'Contractor support personnel' of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. 'Contractor support personnel' for the purposes of this paragraph (d)(2) has the same meaning given to that term in § 740.11(b)(2)(ii) of the EAR. This authorization is not available when a department or agency of the U.S. Government acts as an agent on behalf of a non-U.S. Government person.

(3) *Exclusion to paragraphs (c)(2)(i) and (ii) of this section.* The term ''production'' in paragraphs (c)(2)(i) and (ii) does not apply to back-end steps such as assembly, test, or packaging that do not alter the integrated circuit technology level. If there is a question at the time of export, reexport, or transfer (in-country) about whether a manufacturing stage is back-end or whether a manufacturing stage is back-end or a back-end activity alters the technology level, you may submit an advisory opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(4) *Exclusion to paragraphs (c)(2)(i) through (iii) of this section.* (i) Paragraphs (c)(2)(i) through (iii) do not apply to a natural ''U.S. person,'' as defined in paragraphs (a)(1) and (3) of the definition in § 772.1 of the EAR, employed or working on behalf of a company headquartered in the United States or a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity that is headquartered in either Macau or a destination specified in Country Group D:5.

(ii) Any activities a natural ''U.S. person,'' as defined in paragraphs (a)(1) and (3) of that term's definition in § 772.1 of the EAR, undertakes when employed or acting on behalf of a company not headquartered in the United States or a destination specified in Country Group A:5 or A:6 must comply with the requirements in this paragraph (d)(4) as applicable. For example, if a natural ''U.S. person'' is a freelancer who works or acts on behalf of a company headquartered in the United States or a destination specified in Country Group A:5 or A:6, those activities would not be prohibited under paragraphs (c)(2)(i) through (iii) of this section. However, if that same natural ''U.S. person'' was also working or acting on behalf of a company headquartered somewhere other than the United States or a destination specified in Country Group A:5 or A:6, the activities performed on behalf of such a company would not be excluded under paragraphs (c)(2)(i) through (iii) and a license would be required.

(5) *Exclusion to paragraph (c)(2)(iii) of this section.* Paragraph (c)(2)(iii) does not apply to servicing (including installation) activities unless at a ''facility'' where ''production'' of ''advanced-node integrated circuits'' occurs, which would require a license under paragraph (c)(2)(i) of this section.

* * * * *

(e) * * *

(3) Applications for licenses submitted pursuant to the notice of a license requirement set forth in paragraph (c)(2) of this section will be reviewed with a presumption of denial for Macau and destinations in Country Group D:5, except activities involving a foreign-made item that is not subject to the EAR and performs the same function as an item subject to the EAR, which will be reviewed with a presumption of approval. All other applications will be reviewed with a license review policy of case-by-case and consider factors, such as technology level, customers, and compliance plans.

■ 12. Section 744.23 is revised to read as follows:

§ 744.23 ''Supercomputer,'' ''advanced-node integrated circuits,'' and semiconductor manufacturing equipment end use controls.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) without a license any item subject to the EAR described in paragraphs (a)(1) through (4) of this section when you have ''knowledge'' at the time of export, reexport, or transfer (in-country) that the item is destined for a destination, end use, or type of end user described in paragraphs (a)(1) through (4) of this section, unless excluded by paragraph (a)(5) of this section.

(1) ''*Supercomputers*''—(i) *Item scope.* (A) An integrated circuit (IC) subject to the EAR and specified in ECCN 3A001, 3A991, 4A994, 5A002, 5A004, or 5A992; or

(B) A computer, ''electronic assembly,'' or ''component'' subject to the EAR and specified in ECCN 4A003, 4A004, 4A994, 5A002, 5A004, or 5A992.

(ii) *Destination and end-use scope.* (A) The ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' located in or destined to China or Macau; or

(B) The incorporation into, or the ''development'' or ''production'' of any ''component'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to China or Macau.

(2) ''*Advanced-node ICs*''—(i) *Any item to* ''*production*'' ''*facility*'' *of* ''*advanced-node ICs.*'' Any items subject to the EAR when you know the items will be used in the ''development'' or ''production'' of ICs at a ''facility'' located in China or Macau where ''production'' of ''advanced-node ICs'' occurs.

(ii) *Category 3 items to* ''*facility*'' *where the technology node is unknown.* Any item subject to the EAR specified in an ECCN in Product Groups B, C, D, or E in Category 3 of the CCL when you know the item will be used in the

''development'' or ''production'' of ICs at a ''facility'' located in China or Macau where ''production'' of integrated circuits occurs, but you do not know whether ''production'' of ''advanced-node ICs'' occurs at such ''facility.''

(3) [Reserved]

(4) *Semiconductor manufacturing equipment (SME).* Any item subject to the EAR and specified on the CCL when destined to either Macau or a destination specified in Country Group D:5 for the ''development'' or ''production'' of 'front-end integrated circuit ''production'' equipment' and ''components,'' ''assemblies,'' and ''accessories'' therefor specified in ECCN 3B001 (except 3B001.g, .h, and .j), 3B002, 3B611, 3B991 (except 3B991.b.2), or 3B992.

Note 1 to paragraph (a)(4): Front-end integrated circuit ''production'' equipment includes equipment used in the production stages from a blank wafer or substrate to a completed wafer or substrate (*i.e.,* the integrated circuits are processed but they are still on the wafer or substrate). If there is a question at the time of export, reexport, or transfer (in-country) about whether equipment is used in front-end integrated circuit ''production,'' you may submit an advisory opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(5) *Back-end exclusion.* For purposes of paragraph (a)(2) of this section, the term ''production'' does not apply to back-end steps such as assembly, test, or packaging that do not alter the integrated circuit technology level. If there is a question at the time of export, reexport, or transfer (in-country) about whether a manufacturing stage is back-end or whether a back-end activity alters the technology level, you may submit an Advisory Opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR published in the **Federal Register**, that a license is required for a specific export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the end uses specified in paragraphs (a)(1) through (4) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) *License exceptions.* No license exceptions may overcome the prohibition described in paragraph (a) of this section.

(d) *License review standards.* Applications will be reviewed with a presumption of denial for Macau and destinations specified in Country Group D:5. However, there is a presumption of approval license review policy when there is a foreign-made item available that is not subject to the EAR and performs the same function as the item subject to the EAR, and for end users headquartered in the United States or a destination in Country Group A:5 or A:6, that are not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5. For all other applications, there is a case-by-case license review policy. License review will take into account factors including technology level, customers, and compliance plans. Contract sanctity will be a factor in the review of all applications.

PART 772—DEFINITIONS OF TERMS

■ 13. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 14. Section 772.1 is amended by adding definitions for ''Advanced-Node Integrated Circuits (Advanced-Node IC)'' and ''Extreme Ultraviolet (EUV)'' in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Advanced-Node Integrated Circuits (Advanced-Node IC). For parts 734 and 744 of the EAR, advanced-node integrated circuits include integrated circuits that meet any of the following criteria:

(1) Logic integrated circuits using a non-planar transistor architecture or with a ''production'' 'technology node' of 16/14 nanometers or less;

(2) NOT AND (NAND) memory integrated circuits with 128 layers or more; or

(3) Dynamic random-access memory (DRAM) integrated circuits using a ''production'' 'technology node' of 18 nanometer half-pitch or less.

Note 1 to definition of "*ADVANCED-NODE INTEGRATED CIRCUITS*": *For the purposes of paragraphs (1) and (3) of this definition, the term technology node refers to the Logic Industry ''Node Range'' figure described in the International Roadmap for Devices and Systems, 2016 edition (''More Moore'' White Paper), available at https://irds.ieee.org/images/files/pdf/2016_MM.pdf).*

Technical Note to definition of "Advanced-Node Integrated Circuits": *For the purposes of paragraph (3) of this definition, the calculation methodology to be used in determining whether a DRAM integrated circuit uses a production technology node of 18 nanometer half-pitch or less is the calculated half-pitch method developed, adopted, and used by the Institute of Electrical and Electronics Engineers (IEEE) and published in the International Roadmap for Devices and Systems (IRDS), as follows:*

$$Calculated\ Half-Pitch = \sqrt{\frac{Cell\ Area}{Cell\ size\ \ factor}}$$

*Cell size factor is 8, 6 or 4 depending on the DRAM architectures. Cell area is defined as Wordline*Bitline (which takes into consideration both transistor and capacitor dimensions)*

* * * * *

Extreme Ultraviolet (EUV). Extreme Ultraviolet (EUV) means electromagnetic spectrum wavelengths greater than 5 nm and less than 124 nm.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 15. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 16. Supplement no. 1 to part 774 is amended by:
■ a. Revising ECCNs 3B001 and 3B002;
■ b. Removing ECCN 3B090; and
■ c. Revising ECCNs 3D001, 3D002, 3D003, and 3E001.

The revisions read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3B001 Equipment for the manufacturing of semiconductor devices, materials, or related equipment, as follows (see List of Items Controlled) and ''specially designed'' ''components'' and ''accessories'' therefor.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to 3B001.a.1 to a.3, b, e, f.1.a, f.2 to f.4, g to j.	NS Column 2.
NS applies to 3B001.a.4, c, d, f.1.b, k to p.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
RS applies to 3B001.a.4, c, d, f.1.b, k to p.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.6(a)(6) of the EAR.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500, except semiconductor manufacturing equipment specified in 3B001.a.4, c, d, f.1.b, k to p.

GBS: Yes, except a.3 (molecular beam epitaxial growth equipment using gas sources), .e (automatic loading multi-chamber central wafer handling systems *only* if connected to equipment controlled by 3B001.a.3, or .f), and .f (lithography equipment).

List of Items Controlled

Related Controls: See also 3B991
Related Definitions: N/A
Items:

a. Equipment designed for epitaxial growth as follows:

a.1. Equipment designed or modified to produce a layer of any material other than silicon with a thickness uniform to less than ±2.5% across a distance of 75 mm or more;

Note: *3B001.a.1 includes atomic layer epitaxy (ALE) equipment.*

a.2. Metal Organic Chemical Vapor Deposition (MOCVD) reactors designed for compound semiconductor epitaxial growth of material having two or more of the following elements: aluminum, gallium, indium, arsenic, phosphorus, antimony, or nitrogen;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

a.4. Equipment designed for silicon (Si), carbon doped silicon, silicon germanium (SiGe), or carbon doped SiGe epitaxial growth, and having all of the following:

a.4.a. Multiple chambers and maintaining high vacuum (equal to or less than 0.01 Pa) or inert environment (water and oxygen partial pressure less than 0.01 Pa) between process steps;

a.4.b. At least one preclean chamber designed to provide a surface preparation means to clean the surface of the wafer; *and*

a.4.c. An epitaxial deposition operating temperature of 685 °C or below;

b. Semiconductor wafer fabrication equipment designed for ion implantation and having any of the following:

b.1. [Reserved]

b.2. Being designed and optimized to operate at a beam energy of 20 keV or more and a beam current of 10 mA or more for hydrogen, deuterium, or helium implant;

b.3. Direct write capability;

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material ''substrate''; *or*

b.5. Being designed and optimized to operate at beam energy of 20 keV or more and a beam current of 10mA or more for silicon implant into a semiconductor material ''substrate'' heated to 600 °C or greater;

c. Etch equipment.

c.1. Equipment designed for dry etching as follows:

c.1.a. Equipment designed or modified for isotropic dry etching, having a largest 'silicon germanium-to-silicon (SiGe:Si) etch selectivity' of greater than or equal to 100:1; or

c.1.b. Equipment designed or modified for anisotropic etching of dielectric materials and enabling the fabrication of high aspect ratio features with aspect ratio greater than 30:1 and a lateral dimension on the top surface of less than 100 nm, and having all of the following:

c.1.b.1. Radio Frequency (RF) power source(s) with at least one pulsed RF output; *and*

c.1.b.2. One or more fast gas switching valve(s) with switching time less than 300 milliseconds; *or*

c.1.c. Equipment designed or modified for anisotropic dry etching, having all of the following;

c.1.c.1. Radio Frequency (RF) power source(s) with at least one pulsed RF output;

c.1.c.2. One or more fast gas switching valve(s) with switching time less than 300 milliseconds; *and*

c.1.c.3. Electrostatic chuck with twenty or more individually controllable variable temperature elements;

c.2. Equipment designed for wet chemical processing and having a largest 'silicon germanium-to-silicon (SiGe:Si) etch selectivity' of greater than or equal to 100:1;

Note 1: *3B001.c includes etching by 'radicals', ions, sequential reactions, or non-sequential reaction.*

Note 2: *3B001.c.1.c includes etching using RF pulse excited plasma, pulsed duty cycle excited plasma, pulsed voltage on electrodes modified plasma, cyclic injection and purging of gases combined with a plasma, plasma atomic layer etching, or plasma quasi-atomic layer etching.*

Technical Notes:

1. For the purposes of 3B001.c, 'silicon germanium-to-silicon (SiGe:Si) etch selectivity' is measured for a Ge concentration of greater than or equal to 30% (Si0.70Ge0.30).

2. For the purposes of 3B001.c Note 1 and 3B001.d.14, 'radical' is defined as an atom, molecule, or ion that has an unpaired electron in an open electron shell configuration.

d. Semiconductor manufacturing deposition equipment, as follows:

d.1. Equipment designed for cobalt (Co) electroplating or cobalt electroless-plating deposition processes;

Note: *3B001.d.1 controls semiconductor wafer processing equipment.*

d.2. Equipment designed for:

d.2.a. Chemical vapor deposition of cobalt (Co) fill metal; or

d.2.b. Selective bottom-up chemical vapor deposition of tungsten (W) fill metal;

d.3. Equipment designed to fabricate a metal contact by multistep processing within a single chamber by performing all of the following:

d.3.a. Deposition of a tungsten layer, using an organometallic compound, while maintaining the wafer substrate temperature greater than 100 °C and less than 500 °C; *and*

d.3.b. A plasma process using hydrogen (H_2), including hydrogen and nitrogen ($H_2 + N_2$) or ammonia (NH_3);

d.4. Equipment or systems designed for multistep processing in multiple chambers or stations and maintaining high vacuum (equal to or less than 0.01 Pa) or inert environment between process steps, as follows:

d.4.a. Equipment designed to fabricate a metal contact by performing the following processes:

d.4.a.1. Surface treatment plasma process using hydrogen (H_2), including hydrogen and nitrogen ($H_2 + N_2$) or ammonia (NH_3), while maintaining the wafer substrate at a temperature greater than 100 °C and less than 500 °C;

d.4.a.2. Surface treatment plasma process using oxygen (O_2) or ozone (O_3), while maintaining the wafer substrate at a

temperature greater than 40 °C and less than 500 °C; *and*

d.4.a.3. Deposition of a tungsten layer while maintaining the wafer substrate temperature greater than 100 °C and less than 500 °C;

d.4.b. Equipment designed to fabricate a metal contact by performing the following processes:

d.4.b.1 Surface treatment process using a remote plasma generator and an ion filter; *and*

d.4.b.2. Deposition of a cobalt (Co) layer selectively onto copper (Cu) using an organometallic compound;

Note: *This control does not apply to equipment that is non-selective.*

d.4.c. Equipment designed to fabricate a metal contact by performing all the following processes:

d.4.c.1. Deposition of a titanium nitride (TiN) or tungsten carbide (WC) layer, using an organometallic compound, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C;

d.4.c.2. Deposition of a cobalt (Co) layer using a physical sputter deposition technique and having a process pressure greater than 133.3 mPa and less than 13.33 Pa, while maintaining the wafer substrate at a temperature below 500 °C; *and*

d.4.c.3. Deposition of a cobalt (Co) layer using an organometallic compound and having a process pressure greater than 133.3 Pa and less than 13.33 kPa, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C;

d.4.d. Equipment designed to fabricate copper (Cu) interconnects by performing all of the following processes:

d.4.d.1. Deposition of a cobalt (Co) or ruthenium (Ru) layer using an organometallic compound and having a process pressure greater than 133.3 Pa and less than 13.33 kPa, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C; *and*

d.4.d.2. Deposition of a copper layer using a physical vapor deposition technique and having a process pressure greater than 133.3 mPa and less than 13.33 kPa, while maintaining the wafer substrate at a temperature below 500 °C;

d.5. Equipment designed for plasma enhanced chemical vapor deposition of carbon hard masks more than 100 nm thick and with stress less than 450 Mpa;

d.6. Atomic Layer Deposition (ALD) equipment designed for area selective deposition of a barrier or liner using an organometallic compound;

Note: *3B001.d.6 includes equipment capable of area selective deposition of a barrier layer to enable fill metal contact to an underlying electrical conductor without a barrier layer at the fill metal via interface to an underlying electrical conductor.*

d.7. Equipment designed for Atomic Layer Deposition (ALD) of tungsten (W) to fill an entire interconnect or in a channel less than 40 nm wide, while maintaining the wafer substrate at a temperature less than 500 °C.

d.8 Equipment designed for Atomic Layer Deposition (ALD) of 'work function metal' having all of the following:

d.8.a. More than one metal source of which one is designed for an aluminum (Al) precursor;

d.8.b. Precursor vessel designed and enabled to operate at a temperature greater than 30 °C; *and*

d.8.c. Designed for depositing a 'work function metal' having all of the following:

d.8.c.1. Deposition of titanium-aluminum carbide (TiAlC); *and*

d.8.c.2. Enabling a work function greater than 4.0eV;

Technical Note: *For the purposes of 3B001.d.8, 'work function metal' is a material that controls the threshold voltage of a transistor.*

d.9. Spatial Atomic Layer Deposition (ALD) equipment having a wafer support platform that rotates around an axis having any of the following:

d.9.a. A spatial plasma enhanced atomic layer deposition mode of operation;

d.9.b. A plasma source; *or*

d.9.c. A plasma shield or means to confine the plasma to the plasma exposure process region;

d.10. Equipment designed for Atomic Layer Deposition (ALD) or Chemical Vapor Deposition (CVD) of plasma enhanced of low fluorine tungsten (FW) (fluorine (F) concentration less than 10^{19} atoms/cm^3) films;

d.11. Equipment designed to deposit a metal layer, in a vacuum (equal to or less than 0.01 Pa) or inert gas environment, and having all of the following:

d.11.a. A Chemical Vapor Deposition (CVD) or cyclic deposition process for depositing a tungsten nitride (WN) layer, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C; *and*

d.11.b. A Chemical Vapor Deposition (CVD) or cyclic deposition process for depositing a tungsten (W) layer having a process pressure greater than 133.3 Pa and less than 53.33 kPa, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C.

d.12. Equipment designed for depositing a metal layer, in a vacuum (equal to or less than 0.01 Pa) or inert gas environment, and having any of the following:

d.12.a. Selective tungsten (W) growth without a barrier; *or*

d.12.b. Selective molybdenum (Mo) growth without a barrier;

d.13. Equipment designed for depositing a ruthenium layer (Ru) using an organometallic compound, while maintaining the wafer substrate at a temperature greater than 20 °C and less than 500 °C;

d.14. Equipment designed for deposition assisted by remotely generated 'radicals', enabling the fabrication of a silicon (Si) and carbon (C) containing film, and having all of the following properties of the deposited film:

d.14.a. A dielectric constant (k) of less than 5.3;

d.14.b. An aspect ratio greater than 5:1 in features with lateral openings of less than 70 nm; *and*

d.14.c. A feature-to-feature pitch of less than 100 nm;

d.15. Equipment designed for void free plasma enhanced deposition of a low-k dielectric layer in gaps between metal lines less than 25 nm and having an aspect ratio greater than or equal to 1:1 with a less than 3.3 dielectric constant;

d.16. Equipment designed for deposition of a film, containing silicon and carbon, and having a dielectric constant (k) of less than 5.3, into lateral openings having widths of less than 70 nm and aspect ratios greater than 5:1 (depth: width) and a feature-to-feature pitch of less than 100 nm, while maintaining the wafer substrate at a temperature greater than 400 °C and less than 650 °C, and having all of the following:

d.16.a. Boat designed to hold multiple vertically stacked wafers;

d.16.b. Two or more vertical injectors; and

d.16.c. A silicon source and propene are introduced to a different injector than a nitrogen source or an oxygen source;

e. Automatic loading multi-chamber central wafer handling systems having all of the following:

e.1. Interfaces for wafer input and output, to which more than two functionally different 'semiconductor process tools' controlled by 3B001.a.1, 3B001.a.2, 3B001.a.3 or 3B001.b are designed to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for 'sequential multiple wafer processing';

Note: *3B001.e does not control automatic robotic wafer handling systems ''specially designed'' for parallel wafer processing.*

Technical Notes:

1. For the purposes of 3B001.e, 'semiconductor process tools' refers to modular tools that provide physical processes for semiconductor production that are functionally different, such as deposition, implant or thermal processing.

2. For the purposes of 3B001.e, 'sequential multiple wafer processing' means the capability to process each wafer in different 'semiconductor process tools', such as by transferring each wafer from one tool to a second tool and on to a third tool with the automatic loading multi-chamber central wafer handling systems.

f. Lithography equipment as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods and having any of the following:

f.1.a. A light source wavelength shorter than 193 nm; *or*

f.1.b. A light source wavelength equal to or longer than 193 nm and having all of the following:

f.1.b.1. The capability to produce a pattern with a ''Minimum Resolvable Feature size'' (MRF) of 45 nm or less; and

f.1.b.2. Having any of the following:

f.1.b.2.a. A maximum 'dedicated chuck overlay' value of less than or equal to 1.50 nm; *or*

f.1.b.2.b. A maximum 'dedicated chuck overlay' value greater than 1.50 nm but less than or equal to 2.4 nm;

Technical Notes: *For the purposes of 3B001.f.1.b:*

1. The 'Minimum Resolvable Feature size' (MRF), i.e.,resolution, is calculated by the following formula:

(an exposure light source wavelength in nm) × (K factor)

MRF ----------
maximum numerical aperture

where, for the purposes of 3.B.1.f.1.b, the K factor = 0.25 'MRF' is also known as resolution.

2. 'Dedicated chuck overlay' is the alignment accuracy of a new pattern to an existing pattern printed on a wafer by the same lithographic system. 'Dedicated chuck overlay' is also known as single machine overlay.

f.2. Imprint lithography equipment capable of production features of 45 nm or less;

Note: *3B001.f.2 includes:*

—Micro contact printing tools
—Hot embossing tools
—Nano-imprint lithography tools
—Step and flash imprint lithography (S–FIL) tools

f.3. Equipment ''specially designed'' for mask making having all of the following:

f.3.a. A deflected focused electron beam, ion beam or ''laser'' beam; *and*

f.3.b. Having any of the following:

f.3.b.1. A Full-Width Half-Maximum (FWHM) spot size smaller than 65 nm and an image placement less than 17 nm (mean + 3 sigma); *or*

f.3.b.2. [Reserved]

f.3.b.3. A second-layer overlay error of less than 23 nm (mean + 3 sigma) on the mask;

f.4. Equipment designed for device processing using direct writing methods, having all of the following:

f.4.a. A deflected focused electron beam; *and*

f.4.b. Having any of the following:

f.4.b.1. A minimum beam size equal to or smaller than 15 nm; *or*

f.4.b.2. An overlay error less than 27 nm (mean + 3 sigma);

g. Masks and reticles, designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer not specified by 3B001.g and designed to be used by lithography equipment having a light source wavelength less than 245 nm;

Note: *3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.*

N.B.: *For masks and reticles, ''specially designed'' for optical sensors, see 6B002.*

i. Imprint lithography templates designed for integrated circuits by 3A001;

j. Mask ''substrate blanks'' with multilayer reflector structure consisting of molybdenum and silicon, and having all of the following:

j.1. ''Specially designed'' for ''Extreme Ultraviolet'' (''EUV'') lithography; *and*

j.2. Compliant with SEMI Standard P37;

k. Equipment designed for ion beam deposition or physical vapor deposition of a multi-layer reflector for ''EUV'' masks;

l. ''EUV'' pellicles;

m. Equipment for manufacturing ''EUV'' pellicles;

n. Equipment designed for coating, depositing, baking, or developing photoresist formulated for ''EUV'' lithography;

o. Annealing equipment, operating in a vacuum (equal to or less than 0.01 Pa) environment, performing any of the following:

o.1. Reflow of copper (Cu) to minimize or eliminate voids or seams in copper (Cu) metal interconnects; *or*

o.2. Reflow of cobalt (Co) tungsten (W) fill metal to minimize or eliminate voids or seams;

p. Removal and cleaning equipment as follows:

p.1. Equipment designed for removing polymeric residue and copper oxide (CuO) film and enabling deposition of copper (Cu) metal in a vacuum (equal to or less than 0.01 Pa) environment;

p.2. Single wafer wet cleaning equipment with surface modification drying; or

p.3. Equipment designed for dry surface oxide removal preclean or dry surface decontamination.

Note to 3B001.p.1 and p.3: *These controls do not apply to deposition equipment.*

3B002 Test or inspection equipment ''specially designed'' for testing or inspecting finished or unfinished semiconductor devices as follows (see List of Items Controlled) and ''specially designed'' ''components'' and ''accessories'' therefor.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to 3B002.a.	NS Column 2.
NS applies to 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
RS applies to 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. See § 742.6(a)(6) of the EAR.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500, except semiconductor manufacturing equipment specified in 3B002.b and c.

GBS: Yes

List of Items Controlled

Related Controls: See also 3A999.a and 3B992

Related Definitions: N/A

Items:

a. For testing S-parameters of items specified by 3A001.b.3;

b. For testing microwave integrated circuits controlled by 3A001.b.2;

c. Inspection equipment designed for ''EUV'' mask blanks or ''EUV'' patterned masks.

* * * * *

3D001 ''Software'' ''specially designed'' for the ''development'' or ''production'' of commodities controlled by 3A001.b to 3A002.h, or 3B (except 3B991 and 3B992).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to ''software'' for commodities controlled by 3A001.b to 3A001.h, 3A002, and 3B (except 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c).	NS Column 1.
NS applies to ''software'' for commodities controlled by 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
RS applies to ''software'' for commodities controlled by 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.6(a)(6) of the EAR.
RS applies to ''software'' for commodities controlled by 3A090.	China and Macau *See* § 742.6(a)(6).
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except N/A for RS and for ''software'' ''specially designed'' for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by 3A002.g.1 or 3B001.a.2 to any of the destinations specified in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

3D002 ''Software'' ''specially designed'' for the ''use'' of equipment controlled by 3B001.a to .f and .k to .p, or 3B002.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except ''software'' for 3B001.a.4 c, d, f.1.b, k to p, 3B002.b and c.	NS Column 1.
NS applies to ''software'' for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
RS applies to ''software'' for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.6(a)(6) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except N/A for RS.

List of Items Controlled

Related Controls: Also see 3D991.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

3D003 'Computational lithography' ''software'' ''specially designed'' for the ''development'' of patterns on ''EUV''-lithography masks or reticles.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes

List of Items Controlled

Related Controls: N/A
Related Definitions: For the purposes of 3D003, 'computational lithography' is the use of computer modelling to predict, correct, optimize and verify imaging performance of the lithography process over a range of patterns, processes, and system conditions.
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of commodities controlled by 3A (except 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

License Requirements

Reason for Control: NS, MT, NP, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''technology'' for commodities controlled by 3A001, 3A002, 3A003, 3B001 (except 3B001.a.4, c, d, f.1.b, k to p), 3B002 (except 3B002.b and c), or 3C001 to 3C006.	NS Column 1.
NS applies to ''technology'' for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
MT applies to ''technology'' for commodities controlled by 3A001 or 3A101 for MT Reasons.	MT Column 1.
NP applies to ''technology'' for commodities controlled by 3A001, 3A201, or 3A225 to 3A234 for NP reasons.	NP Column 1.
RS applies to ''technology'' for commodities controlled by 3A090.	China and Macau (See § 742.6(a)(6)).
RS applies to ''technology'' for commodities controlled by 3A090, when exported from China or Macau.	Worldwide (See § 742.6(a)(6)).
RS applies to ''technology'' for commodities controlled by 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. See § 742.6(a)(6) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except N/A for MT, NP, and RS, and ''technology'' for the ''development'' or ''production'' of:
(a) vacuum electronic device amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz;
(b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies'', solar arrays and/or solar panels described in 3A001.e.4;
(c) ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2; and
(d) discrete microwave transistors in 3A001.b.3.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations specified in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations specified in Country Group A:5 or A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of ''Microwave Monolithic Integrated Circuits'' (''MMIC'') amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

Related Definition: N/A

Items:

The list of items controlled is contained in the ECCN heading.

Note 1: *3E001 does not control ''technology'' for equipment or ''components'' controlled by 3A003.*

Note 2: *3E001 does not control ''technology'' for integrated circuits controlled by 3A001.a.3 to a.14, having all of the following:*

(a) Using ''technology'' at or above 0.130 µm; and

(b) Incorporating multi-layer structures with three or fewer metal layers.

Note 3: *3E001 does not apply to 'Process Design Kits' ('PDKs') unless they include libraries implementing functions or technologies for items specified by 3A001 or 3A090.*

Technical Note: *For the purposes of 3E001 Note 3, a 'Process Design Kit' ('PDK') is a software tool provided by a semiconductor manufacturer to ensure that the required design practices and rules are taken into account in order to successfully produce a specific integrated circuit design in a specific semiconductor process, in accordance with technological and manufacturing constraints (each semiconductor manufacturing process has its particular 'PDK').*

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

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Part III

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 732, 734, 736, et al.
Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections; Interim Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 736, 740, 742, 744, 746, 748, 758, 770, 772, and 774

[Docket No. 231013–0248]

RIN 0694–AI94

Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: On October 7, 2022, the Bureau of Industry and Security (BIS) released the interim final rule (IFR), ''Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification'' (October 7 IFR), which amended the Export Administration Regulations (EAR) to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items, and to make other EAR changes to implement appropriate related controls, including on certain ''U.S. person'' activities. This Advanced Computing/Supercomputing IFR (AC/S IFR) addresses comments received in response to only the part of the October 7 IFR that controls advanced computing ICs and computer commodities that contain such ICs. This rule also makes other changes to make the controls more effective and less burdensome, including by correcting and clarifying the controls to more effectively achieve the policy objectives identified in the October 7 IFR. This AC/S IFR is published concurrently with a second BIS IFR, ''Export Controls on Semiconductor Manufacturing Items,'' which addresses public comments received in response to other portions of the October 7 IFR. Together, these IFRs revise the October 7 IFR controls to more effectively achieve BIS's focused national security policy objectives. These revisions protect U.S. national security interests by further restricting China's ability to obtain critical technologies to modernize its military capabilities in ways that threaten the national security interests of the United States and its allies.

DATES: This rule is effective November 17, 2023, except for amendatory instruction 11 amending supplement no. 1 to part 736 of the EAR, which is effective from November 17, 2023, to January 1, 2026.

Comments must be received by BIS no later than December 18, 2023.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The *regulations.gov* ID for this rule is: BIS–2022–0025. Please refer to RIN 0694–AI94 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' Any submissions with file names that do not begin with either a ''BC'' or a ''P'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov.* Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: For questions on the license requirements in the October 7 IFR or the revisions included in this AC/S IFR, contact Aaron Amundson, Director, Information Technology Controls Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5299, Email: *rpd2@bis.doc.gov.* For emails, include ''Advanced computing controls'' in the subject line.

SUPPLEMENTARY INFORMATION:

Background

A. Introduction

On October 7, 2022, BIS released the interim final rule (IFR), ''Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification,'' which made critical changes to the Export Administration Regulations (15 CFR parts 730–774) (EAR) in two areas to address U.S. national security concerns and requested public comments on the newly imposed measures. This IFR was published in the **Federal Register** on October 13, 2022 (October 7 IFR) (87 FR 62186). BIS imposed these new controls to protect U.S. national security interests by restricting certain exports to China that would advance China's military modernization and surveillance efforts. With a calibrated approach, focused on key, cutting-edge technologies, BIS also sought not to undercut U.S. technology leadership or unduly interfere with commercial trade. As noted in the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852, ECRA), the national security of the United States requires that the United States maintain its leadership in the science, technology, engineering, and manufacturing sectors, including technology that is essential to innovation.

The advanced computing ICs and supercomputing capacity controlled through the October 7 IFR are critical for preventing or limiting the further development of weapons of mass destruction, advanced weapons systems, and high-tech surveillance applications that create national security concerns, including through their use in exascale supercomputing, and artificial intelligence (AI) capabilities. Advanced AI models, trained on advanced computing ICs, can be used to improve the design and use of the items listed above. The PRC seeks to use advanced computing ICs and supercomputing capacity in the development and deployment of these AI models to further its goal of surpassing the military capabilities of the United States and its allies.

The October 7 IFR imposed controls on two sets of items and activities. First, the rule established new Export Control Classification Numbers (ECCNs) and end-use controls on certain advanced computing ICs, computer commodities that contain such ICs, and supercomputers. Second, it established a new ECCN for certain semiconductor manufacturing equipment (SME) and

end-use controls related to the ''development'' and ''production'' of three types of ''advanced-node ICs,'' as well as end-use controls on the ''development'' and ''production'' of SME.

Today, BIS addresses these two issues separately through publication of this AC/S IFR and a second BIS IFR, ''Export Controls on Semiconductor Manufacturing Items'' (SME IFR). Together, these IFRs further advance the U.S. national security objectives identified above and further discussed in section C of this rule. This AC/S IFR focuses on the advanced computing controls and related end use provisions of the October 7 IFR and amends the EAR to expand the scope of the October 7 IFR while responding to comments from stakeholders about the advanced computing controls and related end use controls adopted in the October 7 IFR. This AC/S IFR: (1) revises ECCN 3A090 to remove paragraph a, including paragraphs a.1 through a.4, and adds in its place simplified control paragraphs .a and .b, along with a conforming change to ECCN 3A991.p; (2) replaces the criterion ''any other item on CCL that meet or exceed the performance parameters of 3A090 or 4A090'' by positively identifying those ECCNs in new .z paragraphs in nine ECCNs, along with various conforming changes related to the new .z paragraphs in other parts of the EAR; (3) clarifies the scope of ''U.S. person'' and end-use controls related to supercomputers and advanced computing items; (4) makes ECCNs 3A991.p and 4A994.l eligible for License Exception Consumer Communication Devices (CCD, 15 CFR 740.19); (5) expands the Regional Stability (RS) license requirements and amends the RS licensing policy to adopt an additional case-by-case license review policy for certain RS items and adopts a presumption of approval for license applications for destinations other than Macau and Country Group D:5, except for items destined to an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 and with licenses for items destined to Macau and Country Group D:5 being reviewed under a presumption of denial license review policy; (6) broadens the country scope for these controls, with respect to the items controlled for RS reasons as well as the advanced computing Foreign Direct Product (FDP) rule and advanced computing provisions in § 744.23, to destinations specified in Country Groups D:1, D:4, and D:5 in supplement no. 1 to part 740 that are not also specified in Country Groups A:5 or A:6, and with respect to the supercomputer and advanced-node integrated circuit § 744.23 provisions, broadens the country scope from China and Macau to Macau and destinations in Country Group D:5; (7) clarifies that the model certificate published in the October 7 IFR may be used for all FDP rules; (8) adds five new red flags to assist with compliance, including for recognizing ''direct products'' under the FDP rules; (9) adds one new Temporary General License (TGL); (10) creates a new license exception for Notified Advanced Computing (NAC); and (11) makes other corrections and clarifications.

B. Public Comments and BIS's Responses

BIS received 43 responsive public comments, covering 78 specific topics, in response to the October 7 IFR. This rule summarizes and addresses comments on the advanced computing provisions, as well as general comments applicable to all aspects of the October 7 IFR that are not otherwise addressed in this SME IFR. BIS appreciates the many public comments it received, and encourages continued engagement and feedback, including comments on the SME and AC/S IFRs which allow for a 60-day comment period and, for most provisions, a 30-day delayed effective date.

Complexity and Compliance Burden

Topic 1: A commenter noted that the October 7 IFR is so complex that only a small group of people with significant expertise in the EAR and semiconductors can fully understand the rulemaking. This commenter noted that many small and medium enterprises, or even large foreign multinationals, not highly versed in these details will either not know if they are following the rule, or out of an abundance of caution, ''over-comply'' by restricting legitimate exports and trade not otherwise subject to these rules. Another commenter noted that ensuring compliance will result in dramatic increases in compliance-related costs and associated burdens. This commenter noted that the number of specific components, other commodities, software, and technology affected by the new rules is in the tens of millions, and each item requires marking, analysis, or other handling to ensure compliance. Another commenter noted that this complexity may result in misunderstandings and non-compliance, so simpler controls are more effective in furthering BIS's objectives.

BIS response: BIS does not agree that the rules are so complex that only a handful of people with expertise will be able to understand the controls. Nevertheless, BIS is revising the October 7 IFR to facilitate the public's understanding of the IFR and to simplify the provisions, *e.g.,* changing the text of ECCN 3A090 to simplify the calculations required. BIS has taken into account the commenters' concerns over increases in compliance-related controls and associated burdens and made changes in this AC/S IFR to make the controls more focused, which should help reduce these burdens and compliance costs where possible. In addition, Section C.10 discusses changes to enhance compliance, including the addition of five new red flags to assist with compliance. BIS has conducted a robust outreach program and posted FAQs on the October 7 IFR to assist public understanding. Reducing complexity and improving clarity are also two key objectives of this AC/S IFR and the SME IFR.

Topic 2: A member of Congress noted that they had been told by one of their constituents that the October 7 IFR is overly broad in its current form and will damage and disrupt both American industry and global semiconductor supply chains by excluding basic U.S. products that are not subject to specific export controls. This commenter has also been assured by their constituent that the resulting vacuum will be filled by foreign-produced products, including those made in China. This member of Congress shares BIS's stated goal of protecting ''critical U.S. national security and foreign policy interests.'' However, this member of Congress believes that we must ensure these regulations are focused and do not extend beyond their intended national security objectives.

BIS response: BIS shares concerns about imposing unilateral controls that create an unlevel playing field for U.S. products and companies. BIS intends the controls to be as focused as possible, while at the same time achieving U.S. national security and foreign policy objectives. One example is adding .z paragraphs to nine ECCNs in order to replace the broad regional stability control for all items that contain ''advanced-node ICs,'' see discussion in Section C.3.A. BIS is adopting additional changes to better achieve these objectives in this AC/S IFR and in the SME IFR.

Dialogue With Industry for the October 7 IFR, Taking Into Account Potential Burden to Industry, Unintended Consequences, and Economic Impacts

Topic 3: Some commenters noted that taking time to have meaningful engagement with industry will help head off unintended consequences. These commenters noted that while there will be emergencies that require swift action without time for industry consultation, the U.S. government, and particularly BIS, should endeavor to conduct meaningful engagement with industry and relevant Technical Advisory Committees (TACs) whenever possible. These commenters emphasized it is critical that BIS prioritize and meaningfully leverage this engagement when a rule of this breadth and complexity is under consideration, including prior to publishing a final rule for the October 7 IFR. These commenters noted that given the complexity of the October 7 IFR and the global supply chain, BIS should conduct in-depth consultations with industry experts—both in semiconductor companies and more broadly in industries that incorporate semiconductors—in advance of releasing a final rule. Another commenter noted that the economic analysis that needs to be done for the impact of this October 7 IFR and similar rules requires industry input.

BIS response: BIS agrees that having meaningful engagement with industry through the BIS TACs and soliciting public comments prior to implementing controls is beneficial for the agency as well as the private sector and can reduce unintended consequences. BIS also agrees that it is important to obtain input on the economic impact of export controls. BIS's primary objective is protecting U.S. national security and foreign policy interests, so at times the agency must act quickly and decisively to ensure those national security and foreign policy interests are protected. For the October 7 IFR, BIS did consult with its TACs, but the national security and foreign policy concerns at stake required that controls be put in place expeditiously. Because BIS was aware that there may be some unintended impacts from the October 7 IFR, BIS published the October 7 IFR as an interim final rule with a request for comments, which allowed for BIS in this AC/S IFR and SME IFR to make additional changes to the control structure and address some of those unintended consequences. Since the rule was published, BIS has engaged extensively with its TACs to revise the control parameters of ECCN 3A090.

Topic 4: A commenter noted that longer delayed effective dates would ease company confusion and help improve compliance. This commenter suggested that BIS consider implementing such rules in the future with a delayed implementation period to allow for industry to study the rules and implement effective compliance programs. This approach would have significantly avoided the unintended confusion that this new complex rule created. One commenter noted that BIS would have benefitted from having more time to consider the October 7 IFR prior to publication and noted that based on this commenter's interactions with BIS shortly after the October 7 IFR was published, BIS did not seem ready to advise the public on its own rule.

BIS response: In this AC/S IFR and SME IFR, BIS is adopting a 30-day delayed effective date, except as noted in the AC/S IFR and SME IFR where a sooner effective date is warranted. BIS agrees that longer delayed effective dates can ease confusion by companies and help improve compliance, but BIS also needs to account for the national security and foreign policy concerns it is addressing. An extended delayed effective date can undermine those national security and foreign policy concerns. For example, a six-month delayed effective date for the October 7 IFR would have provided additional time for outreach and for companies to adjust to the controls, but that six month delay would have also allowed end users in China substantial time to acquire key pieces of SME needed to help them achieve advanced nodes of semiconductor fabrication and to stockpile various ''parts'' and ''components'' needed for future development of supercomputers. BIS acted expeditiously in imposing controls because of national security and foreign policy concerns. In addition, to better enable compliance and understanding of the rule, the agency provided FAQs to the public (which were updated as needed), conducted a public hour-long briefing on the rule by BIS leadership the day of publication, and extended the public comment period for the October 7 IFR to enable industry to raise concerns for the agency's consideration. To ensure BIS was providing fulsome public guidance, the agency also held internal training for staff responsible for primary public interactions. BIS takes this type of deliberative approach to ensure, as much as possible, that there is consistency and accuracy in the responses being given to the public.

Topic 5: A commenter noted that in the past, BIS had sought industry input prior to publishing rules and should return to that practice. This commenter noted that until recent years, it had been the long-standing practice for BIS to obtain technical and other inputs from both the public and the TACs before publishing rules (other than those implementing new controls agreed to with the multilateral regimes) given that there is much about commercial supply chains, technologies, and economics that the U.S. Government does not fully understand.

BIS response: This commenter may be referring to agency practice during Export Control Reform (ECR), during which the Departments of Commerce and State generally published related rules on a proposed basis. At that time, the items that were being proposed to be moved to the EAR were already controlled under the ITAR, so there was not the same urgent national security imperative as was present with the October 7 IFR. Before that time, the vast majority of BIS's rules were published *as direct* final or interim final rules. Accordingly, the commenter is not correct that recently BIS has deviated from past precedent. Since ECR, BIS has continued to publish notices and proposed rules, such as with the Section 1758 rules (other than those implementing multilateral agreements). When BIS has needed to quickly implement controls for national security or foreign policy reasons, BIS has published interim final rules with requests for public comment to gain public input while simultaneously allowing the agency to impose needed controls, and if necessary, amend those controls in response to public comment, as BIS is doing in this AC/S IFR. The imposition of controls without first issuing a proposed rule is consistent with BIS's statutory authority in ECRA, enacted in 2018, and is thus another distinction from rules promulgated before 2018.

Other Ways That BIS Can Consult With Industry To Better Improve the Effectiveness of Policies in This Area

Topic 6: A commenter requested that BIS should publish, or at least make available for TAC review, the policy justifications for current Category 3 and 4 controls. BIS is increasingly asking industry for input on significant new controls related to semiconductors and associated technology in Categories 3 and 4 and to provide effective feedback and assessment, and it would be helpful to understand the specific policy rationale for new and existing control classifications. Another commenter requested if required by Congress or other parties to publicly release

licensing data surrounding the October 7 IFR, that BIS should strive to provide the most complete data possible, while still protecting confidential business information. This commenter requested that the data should include statistics on licenses that (i) are still pending review, (ii) received an ''intent to deny'' response, (iii) were ''returned without action,'' and (iv) issued with restrictive conditions. The data on approvals and denials should also be connected to what the licensing policy is for such items and when those licensing policies were created.

BIS response: This comment is somewhat outside the scope of the October 7 IFR, but BIS is addressing it given its relevance to overall controls. BIS understands the commenter's intent by asking for this type of engagement with the TACs. BIS does attempt to share background information on how controls developed over the years as well as the basis and policy goals of those controls with the BIS TACs, particularly during closed TAC sessions. BIS subject matter experts and its TACs are also encouraged to take a fresh look at the controls on a regular basis regardless of what the original rationale may have been for imposing controls. Similarly, whether in response to a proposed rule or IFR, the agency seeks the public's input on controls so that the public can help assess whether policy goals are being met. BIS has made every effort to share open source information related to its policy objectives for this rule and the SME IFR as part of this rulemaking.

In response to the comment that the agency should release specific information to the public or Congress, BIS notes that, with limited exceptions related to requests from Congressional committees of appropriate jurisdiction, the agency is required by statute to withhold from disclosure certain categories of information absent a determination that the release is in the U.S. national interest. That statutory restriction on release is intended to protect the business confidential information noted by the commenter. BIS agrees that when such licensing data is released, it will provide an accurate account of the relevant licensing information.

Topic 7: A commenter noted that ECRA section 1765 (50 U.S.C. 4824) requires BIS to submit to Congress by the end of the year a report on the implementation of ECRA during the previous year. Subsection (a)(2) requires that the annual report include a description of ''the impact of [all that year's] controls on the scientific and technological leadership of the United States.'' In addition, ECRA section 1752(1) (50 U.S.C. 4811(1)) states that the United States should ''use export controls only after full consideration of the impact on the economy of the United States.'' Similarly, ECRA section 1752(3) states that the impact of the implementation of new controls on U.S. leadership and competitiveness ''must be evaluated on an ongoing basis and applied in imposing controls . . . to avoid negatively affecting such leadership.'' This commenter believes that it is important for BIS to obtain formal industry input on this specific topic so that its report to Congress is accurate and complete.

BIS response: BIS agrees that it may be beneficial to allow for public input to assist BIS in preparing this annual report. BIS intends in the next annual cycle for this report to publish a notice to solicit comments in the area. BIS will then evaluate the amount and type of public input provided to the agency to determine if continuing to publish this type of notice is worthwhile in the future.

Free Trade, Addressing U.S. Relationship With China, and Benefits From Trade With China

Topic 8: A commenter requested that especially at a time when U.S.-China relations are fraught, we should aim to strengthen ties and increase cooperation to reduce the risk of military conflict and to allow the United States and the whole world to benefit from the fruits of our shared innovations.

BIS response: The U.S. Government works with China in multiple ways to reduce tensions and find areas in which the two governments can work together. Where the policies of the Chinese Communist Party (CCP) run counter to U.S. national security and foreign policy interests, the U.S. Government takes appropriate actions to address its concerns, including by ensuring that items subject to the EAR are not used to assist CCP military advancement.

Topic 9: A commenter noted that trade with China brings many important benefits to the U.S. economy and American workers. This commenter noted that advanced U.S. manufacturers of all sizes and their American business partners and consumers have benefitted from globally integrated supply chains that have improved efficiency and lowered production costs for U.S. firms. Revenues generated in China are often reinvested in global and U.S. research and development (R&D) activities, which in turn allows U.S. companies to maintain their competitive edge over PRC and foreign competition. Another commenter noted a belief that the October 7 IFR is counter to U.S. free trade advocacy and could boomerang negatively on the United States if China retaliates with similar trade restrictions.

BIS response: BIS agrees with the importance of continued trade with China. China's military-civil fusion policy has made it much more challenging for the U.S. Government, as well as exporters, reexporters, and transferors, to be able to clearly identify items and transactions that will be only for civil end uses. BIS has tried to address this circumstance by imposing focused controls. Focused controls can be more complex than the imposition of broad controls (such as on an entire country), but BIS has adopted focused controls to restrict trade as necessary for national security or foreign policy reasons while not impairing trade for civil applications.

Regarding the comment that the October 7 IFR is counter to U.S. free trade advocacy and could lead to the imposition of trade controls by China, BIS notes the national security and foreign policy reasons described in that rule as the reasons for the imposition of those controls. See 87 FR 62186–88 (noting, among other things, China's use of advanced computers for its military modernization efforts, military decision making, planning, and logistics, cognitive electronic warfare, radar, signals intelligence, and jamming, as well as China's use of supercomputers to improve calculations in weapons design and testing including for WMD such as nuclear weapons and hypersonics and other advanced missile systems). These controls were not implemented as protective trade measures, but rather were imposed to protect U.S. national security. BIS is aware of and takes into account concerns about the implications of imposing controls, but those concerns cannot deter BIS from taking actions to protect U.S. national security and foreign policy interests.

Importance of Regular Review of These Controls To Achieve the National Security and Foreign Policy Objectives Outlined in the October 7 IFR, and for Consistency With ECRA

Topic 10: A commenter noted that ECRA requires that any controls imposed under section 4812, which include end-use controls, ''must be evaluated on an ongoing basis . . . to avoid negatively affecting U.S. leadership in the science, technology, engineering, and manufacturing sectors, including foundational technology that is essential to innovation.'' ECRA section 4811(3). The commenter noted that the October 7 IFR needs to be

reviewed regularly. Another commenter noted that the October 7 IFR demonstrates a significant U.S. policy shift, as articulated by U.S. National Security Advisor Jake Sullivan, that the previous U.S. ''sliding scale approach . . . to stay only a couple of generations ahead . . . is not the strategic environment we are in today.'' Yet, the United States will struggle to maintain ''as large a lead as possible'' if the government pursues a unilateral approach that alienates allies and trading partners and restricts companies from selling consumer technologies worldwide.

BIS response: BIS intends, consistent with all export controls administered under the EAR, to review the controls from the October 7 IFR on a regular basis to determine if any updates are needed to make those controls more effective. Since the October 7 IFR was announced, BIS has been reviewing these controls, not just in response to the public comments received, but also based on BIS's experience in administering and enforcing the controls, as well as discussions with allies. These considerations have resulted in the changes made to the October 7 IFR included in this AC/S IFR and SME IFR. BIS will continue to review these controls on an ongoing basis and make changes as warranted, including to controls that use specified control parameters that over time may need to be reevaluated. BIS notes that National Security Advisor Sullivan's remarks provide an example of the Administration previewing policy and related controls and are responsive to other comments requesting this type of guidance. Consistent with the policy described by National Security Adviser Sullivan, the October 7 IFR controls resulted from the speed of the technological advancements that could be leveraged for the most sensitive national security activities, as well as furthering human rights violations. The controls established in the October 7 IFR and these rules are needed to address the current national security threats presented by China.

Agrees With the National Security and Foreign Policy Concerns Identified in the October 7 IFR for Why These Changes Were Needed

Topic 11: A commenter noted that monitoring the production of more supercomputers and AI will benefit the world at large. The commenter sees the October 7 IFR as the best option for national security and regional stability purposes because it addresses the military use of these computers. If these AI and supercomputers are left unmonitored, they may fall into the wrong hands and become a threat to the world at large.

BIS response: BIS agrees.

Topic 12: A commenter noted that given the likely importance of AI capabilities to national security and economic prosperity, the commenter expects significant pressure for China to stay at the frontier of AI. The commenter noted that all viable paths for doing so may be explored. This pressure will mount over time, as the importance of AI technology grows and as the AI-relevant ICs produced outside of China outpace the technology to which AI-developers in China, including the People's Liberation Army (PLA), have access. Another commenter noted that the October 7 IFR chip controls were implemented to prevent human rights abuses and protect international security interests by making it more difficult for the government of China to attain advanced AI capabilities. This commenter noted that the use of these supercomputers to monitor the activities of PRC citizens is inappropriate and this is why the October 7 IFR is the best option.

BIS response: BIS acknowledges both comments and takes PRC human rights abuses seriously. China has been transparent about its military-civil fusion (MCF) strategy and the importance it places on advanced AI as part of MCF. China has already demonstrated on numerous occasions how it has been leveraging advanced technologies against its own people. See, *e.g.,* 84 FR 54002 (Oct. 2, 2019) (adding Xinjiang Uighur Autonomous Region (XUAR) People's Government Public Security Bureau, eighteen of its subordinate municipal and county bureaus, and several other entities in China to the Entity List because they were implicated in human rights violations and abuses in the implementation of China's campaign of repression, mass arbitrary detention, and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the XUAR).

U.S. CHIPS Act and Sufficiency of Existing Company Compliance Programs

Topic 13: A commenter noted that the U.S. CHIPS Act will help keep the United States in the lead for semiconductors. The U.S. CHIPS Act, which appropriated over $52 billion to shore up the semiconductor ecosystem in the United States, will enable continued U.S. leadership in leading-edge semiconductors and SME, and help preserve the large technological differential vis-à-vis China.

BIS response: The October 7 IFR was designed to address the U.S. national security and foreign policy concerns with China over acquiring these capabilities and their use in WMD-related applications. BIS agrees that the U.S. CHIPS Act is important for helping to promote U.S. to maintain its leadership in semiconductors. The most comprehensive and effective policy both restricts key technologies from China where needed to address national security and foreign policy concerns and promotes U.S. and allied country technology leadership.

Topic 14: A commenter noted that companies' sophisticated export compliance programs should mitigate the need for additional controls. This commenter noted that many U.S. companies—as well as multinational companies from U.S. allied countries and partners with a U.S. presence—have longstanding, sophisticated export control compliance programs to acquire export licenses and ensure that their products and processes are not facilitating the technological development of items by a sanctioned entity, military end user, or military end use.

BIS response: BIS notes that compliance programs are designed to follow the rules as they are written. While BIS applauds efforts by companies to conduct extensive due diligence, this does not replace the need for regulations addressing national security and foreign policy concerns.

China Will Obtain the Items it Needs Regardless of U.S. Controls

Topic 15: A commenter noted that research indicates that China's military systems primarily rely on older and less sophisticated chips made in China, on which U.S. export controls will have limited effect. The commenter noted should China require more advanced chips for AI-driven systems, they will likely be able to develop and produce them—at significant cost and on a slower timeline.

BIS response: Certain PRC weapons systems may not rely on the most advanced ICs. However, for the most advanced weapons systems such as hypersonic missiles or for super computers that are used to make more advanced WMD or design and produce more advanced weapons systems, advanced ICs are critical to PRC efforts.

Topic 16: A commenter noted that restricting U.S. persons in assisting China's advanced semiconductor manufacturing is not going to be enough. This commenter noted that

some U.S. persons working in financial institutions (*e.g.,* venture capital and private equity) help China to invest in the semiconductor industry and help PRC companies obtain semiconductor talent, intellectual property, and equipment from all over the world.

BIS response: BIS shares these concerns that certain actors will try to evade the regulations imposed through the October 7 IFR and these rules. These concerns underpinned the October 7 IFR controls such as the expanded ''U.S. persons'' control under § 744.6, two new end use controls under § 744.23, and the two new foreign direct product rules and expanded Entity List FDP rule under § 734.9. To address concerns around U.S. investment, the Administration issued Executive Order 14105 that will address outbound investment from the United States.

China and Macau Retaliation To Gain Greater Market Share for PRC Indigenous Companies Worldwide and PRC Companies Filling the Void Left by U.S. Companies

Topic 17: A commenter's association members expressed concern that one unintended consequence of the October 7 IFR may be that China will increase its production of legacy node semiconductors and flood global markets with those products at significantly reduced prices.

BIS response: While the October 7 IFR was not intended to impact legacy node semiconductors in China, BIS acknowledges the possibility that these controls may generate spillover effects. The type of concern described in the comment relate to issues to be addressed through other authorities and forums and are outside of BIS's authorities.

Topic 18: A commenter noted that the October 7 IFR has given a significant boost to China's own materials suppliers.

BIS response: BIS is aware that the restrictions imposed under the October 7 IFR may give PRC indigenous providers an opportunity to try to fill potential new voids in the market. The October 7 controls, in particular the CCL controls, were intended to impose license requirements on key gateway items that PRC entities would need but which are not indigenously manufactured in China. BIS intends to continue to monitor such developments and adjust its controls as warranted. BIS encourages the public to provide specific information on PRC indigenous capabilities in comments responding to this AC/S IFR and SME IFR. See section D question 5.

ECCN 3A090

Topic 19: A commenter noted that there needs to be guidance on the circumstances in which controls extend to components controlled under ECCNs 4A003.b and 3A090.a. The commenter noted that ECCN 4A003.b already controls ICs with the 4A003.b characteristics of 29 Weighted TeraFLOPS (WT), soon to be 70 WT. In addition, 4A090 controls devices with ICs exceeding 4800 bits x TOPS. The commenter noted that there is no guidance as to which of these two limits is to apply to license applications for export to China. This commenter also noted that ECCN 4A003.b (Adjusted Peak Performance (APP) exceeding 29 WT) already covers the much higher, by an order of magnitude, 4A090.a license requirement limit, with no guidance as to which of these limits is to apply to license applications for export to China. The commenter notes that these differences present inconsistencies in the EAR.

BIS response: The APP formula in ECCN 4A003 and the bits x TOPS metric (now modified to a TPP metric) in ECCN 3A090 apply to different commodities. ECCNs 3A090 and 4A090 control items based on the performance of a single chip, while the APP formula in ECCN 4A003 describes aggregate performance across multiple chips. However, BIS acknowledges that a computer or component could exceed the performance parameters of both ECCNs 4A003.b and 4A090 or 3A090. The October 7 IFR accounted for this possibility by applying controls to items classified on the Commerce Control List (CCL) other than under ECCNs 4A090/3A090 that meet or exceed the 4A090/3A090 performance thresholds. This AC/S IFR clarifies this issue by adding a .z ''items'' paragraph to ECCN 4A003 to control items that meet or exceed ECCN 4A090 specifications. This change is intended to provide clear guidance regarding the relationship between ECCNs 4A090 and 4A003.b and .z.

Topic 20: A commenter had a question on interpreting Technical Note 2 under ECCN 3A090. The commenter noted that the term ''bit-manipulation operations, and/or bitwise operations'' seems susceptible of a broad interpretation including any kind of data processing, and questioned whether this was the intent. The commenter asked how exporters should think about classifying a component for a router or a switch that meets or exceeds the technical control parameters under ECCN 3A090 but which would otherwise be classified under an ECCN in Category 5, Part 1 or Part 2.

BIS response: The October 7 controls were not intended to apply to telecommunications equipment or parts and components designed for telecommunications equipment. For example, 4A090 is in Category 4, which applies to computers. BIS would not classify a router or switch in Category 4. Therefore, a router or switch that meets the control parameters of 4A090 would not be subject to these controls. Category 5 Part 2 could capture some of these items, because that category also applies to general purpose computing equipment with encryption functionality.

Topic 21: A commenter noted that with respect to the ''aggregate bidirectional transfer rate'' provision of 3A090, BIS should incorporate either an additional technical note in the CCL under 3A090, or a definition of ''aggregate bidirectional transfer rate'' with a specific explanation of how this rate is calculated over all inputs and outputs in part 772.

BIS response: BIS retains this parameter in the revised ECCN 3A090 included in this AC/S IFR. For greater clarity, including for providing greater clarity on how to apply the criterion of ''aggregate bidirectional transfer rate,'' the AC/S IFR revises the Technical Notes to 3A090 by removing the five technical notes and replacing those with four technical notes. Most importantly, this AC/S IFR replaces bits x TOPS with 'Total processing performance' ('TPP') values and defines objective criteria that can be used to calculate the TPP value. See section C.1. below for additional information on the revision to these technical notes.

Topic 22: A commenter noted that for ECCN 3A090 and programmable ICs, there is no inherent communications or calculations capability. The commenter requested that BIS issue guidance on how to (1) address this complex calculation/interpretation theoretical performance situation, perhaps via a practical manual, and (2) leverage metrics from other programmable device ECCNs that are already on the CCL, such as under 3A001.a.7, 3A991.d, or others.

BIS response: The rewrite of ECCN 3A090 included in this rule addresses this comment. BIS, in consultation with its Information Systems Technical Advisory Committee (ISTAC), considered compiling a practitioner's guide but ultimately decided that changing the text of ECCN 3A090 to simplify the calculation was a better approach.

Topic 23: A commenter noted that performance parameter calculations

stated in ECCN 3A090 are unclear and requested further guidance, such as a formula or additional details regarding the types of performance parameters that need to be included in the calculations.

BIS response: BIS agrees. This AC/S IFR includes a revision to ECCN 3A090 to adopt alternative control parameters to address the concerns identified by the commenters.

Topic 24: A commenter noted that guidance needs to be provided on how to calculate the 3A090 TOPS Performance Metric. ECCN 3A090 introduces a new performance metric, TOPS (trillions of operations per second). The commenter noted that undertaking a TOPS determination is difficult because the definition of TOPS relies on the term ''operations.'' The word ''operations'' is not defined in the October 7 IFR and does not have a consistent industry definition.

BIS response: BIS agrees that there is ambiguity in the TOPS calculation. For this reason, BIS has amended the text of ECCN 3A090. This AC/S IFR replaces bits x TOPS with 'Total processing performance' ('TPP') values and defines objective criteria that can be used to calculate the TPP value in ECCN 3A090. BIS worked closely with its ISTAC in developing this updated technical note.

ECCN 4A090

Topic 25: A commenter noted that ECCN 4A090 creates a ''see through'' rule similar to something found in the State Department's International Traffic in Arms Regulations (ITAR) that is too broad for a civilian end item that happens to include even a single IC classified as 3A090. This commenter noted that consistent with § 770.2(b)(1), computers and electronic assemblies that incorporate a single IC classified as 3A090 should be excluded from the 4A090 control if the physical incorporation is not used to evade the requirement for a license.

BIS response: BIS does not agree. The structure of ECCN 4A090.a is needed to ensure that incorporation of ECCN 3A090 items into higher level items is not conducted to circumvent the intent of the 3A090 controls. BIS also notes that this is not a ''see through'' rule because the high level computer, ''electronic assembly'' or ''component'' is still classified under 4A090. The incorporation of the 3A090 commodity changes the technical characteristics of those referenced items, which leads to control under 4A090 instead of other CCL entries. This structure is not new to Category 4. To calculate the APP value for a 4A994 computer, an exporter has to determine the APP value of the CPU. Exporters must apply the same analysis to 4A090.

Topic 26: A commenter requested BIS should confirm that an appliance would not be considered a ''computer'' for purposes of ECCN 4A090. BIS also should confirm that a printed circuit board specially designed for such appliance would not be considered an ''electronic assembly'' for purposes of ECCN 4A090.

BIS response: For control under ECCN 4A090, an item must be a general purpose computer. For example, BIS does not classify network security appliances or DNA sequencing appliances in Category 4. When evaluating such systems, exporters should determine the classification of the item without regard to whether it contains a 3A090 IC or has encryption functionality. If the appliance would be controlled in Category 4, then 4A090 controls would likely apply.

Topic 27: A commenter noted the ECCN 4E001 has an NS control that is likely not intended and should be corrected. This technology in ECCN 4E001 is now subject to both RS and NS1 controls, even though the discussion in the October 7 IFR focuses only on RS controls. The application of NS1 controls creates new authorization requirements (including deemed export requirements) for all countries except Canada. The commenter requests that BIS revise ECCN 4E001 to exclude technology for commodities controlled by 4A090 or software specified by 4D090 from the NS1 controls.

BIS response: BIS agrees the NS control was not intended. This AC/S IFR makes this correction.

Topic 28: A commenter requested BIS revise ECCN 4E001 to remove control of ''use'' technology for 4A090. The commenter noted that this appears to be over-controlled and beyond the intent of the October 7 IFR. The October 7 IFR imposes controls on the technology for the ''development,'' ''production,'' and ''use'' of 4A090 items controlled under 4E001, but only imposes controls on the ''development'' or ''production'' of 3A090 items controlled under 3E001—but not the ''use'' technology of 3A090. This results in the technology to ''use'' a 4A090 computer part (which happens to have a 3A090 IC onboard) having higher controls than the ''use'' technology of the 3A090 IC itself. The commenter noted that this approach appears to be inconsistent as applied to other, more-controlled items.

BIS response: BIS agrees. This AC/S IFR revises ECCN 4E001.a to add an exclusion for technology for the ''use'' of a 4A003 computer.

Topic 29: A commenter requests that BIS issue a FAQ or regulatory clarification on the classification of ECCN 4E001 technology when 3A090 or 4A090 are applicable. The commenter noted what it believes is a growing body of ambiguity that stems from the ''see through'' nature of 3A090 items incorporated into the higher-level 4A090 items and the impacts that has on associated technology. Exporters are in a quandary reading 4E001, which controls the technology for the ''development,'' ''production,'' or ''use'' of 4A090.

BIS response: Under ECCN 4E001 for 4A090 commodities, BIS controls technology that is ''required'' for the computer achieving or exceeding the 3A090 parameters. In some cases, this may occur through a relatively unsophisticated step, such as inserting a card in a slot in the computer, which BIS would consider to be ''development'' or ''production'' and as noted in the BIS response to Topic 28, this AC/S IFR adds an exclusion to 4E001 for ''use'' Technology for 4A090. Other instances may require more technical know-how that may rise to the level of controlled 4E001 technology. The application ultimately turns on an analysis of what is ''required'' for exceeding the control level. BIS intends to issue a new FAQ to address this topic more broadly.

Relationship of New Controls to Category 5—Part 2, as it Relates to ''or Identified Elsewhere on the CCL That Meet or Exceed the Performance Parameters of ECCNs 3A090 or 4A090, Consistent With § 734.9(h)(1)(i)(B)(1) and (h)(2)(ii) of the EAR'' Under § 742.6(a)(6)

Topic 30: Several commenters raised concerns with the October 7 IFR under § 742.6(a)(6), along with other provisions in the October 7 IFR, *e.g.,* § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii), using the criteria ''or identified elsewhere on the CCL that meet or exceed the performance parameters of ECCNs 3A090 or 4A090.'' These commenters had concerns that this approach was unprecedented under the EAR in several respects and created ambiguity regarding the correct classification, such as whether an item should be classified under 3A090 or 4A090 or under an encryption ECCN, *e.g.,* 5A002 or 5A992. These commenters emphasized that company compliance systems were not set up to address this type of dual classification complexity and that mistakes in classification would likely occur and significant questions would be raised for managing export clearance. These commenters requested BIS to

adopt an alternative approach that would be more in line with how items are typically classified on the CCL by either creating additional ECCNs to control these items that would otherwise meet or exceed the performance parameters of ECCN 3A090 or 4A090 or to add under the relevant additional ECCNs an ''items'' level paragraph to identify the items that would meet or exceed the performance parameters of ECCN 3A090 or 4A090.

BIS response: BIS is changing this aspect of the October 7 IFR. BIS recognizes that certain aspects of the criteria used in the October 7 IFR deviated from standard EAR practices, *e.g.,* imposing an RS license requirement on certain ECCNs that did not contain an RS control. However, BIS did not intend to change underlying classifications. For example, an ECCN 5A002 commodity that met or exceeded the control parameters in 3A090 or 4A090, would have still been classified under ECCN 5A002, but would require a license under § 742.6(a)(6). BIS agrees with the commenters that because of the special RS license requirements, that effectively would mean exporters, reexporters, and transferors would have to identify and treat that 5A002 commodity that met or exceeded the control parameters in 3A090 or 4A090 differently. BIS also agrees with the concerns raised by these commenters that it would create significant burdens and possibly confusion for exporters, reexporters, or transferors.

To address this issue, this AC/S IFR removes the criteria of concern and instead identifies the nine ECCNs on the CCL that BIS determined meet or exceed the control parameters in ECCNs 3A090 or 4A090. As a result, when classifying an item, review can focus on these nine ECCNs, which addresses the commenter's concerns. In addition, BIS agrees that creating a distinct classification for ''items'' in each of these ECCNs under a new .z ''items'' paragraph is warranted. This AC/S IFR also adds an RS control for these nine ECCNs, as well as adding Related Controls to cross reference 3A090, 4A090, 3A991.p, and 4A994.l. This rule provides additional guidance for export clearance of these .z items, as well as 3A090 and 4A090 to make it easier for exporters and recipients outside the United States to identify these items, and for the U.S. Government to have greater transparency into what items are being exported. This AC/S IFR also revises §§ 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) and 742.6(a)(6) to remove the criterion and add in their place the .z ECCNs.

Additional discussion about the addition of the .z paragraphs can be found in section C.3 of this rule.

Additional Changes for ECCNs in the October 7 IFR

Topic 31: A commenter requested BIS change new ECCNs from 000 series to 900 series. This commenter noted that because they are U.S. unilateral controls, BIS should change the ECCN numbers from 3A090, 3B090, 4A090, 4D990 to 3A990, 3B990, 4A990, 4D990. This same commenter requested deleting the term ''specially designed'' in various places as used in the ECCNs included in the October 7 IFR and replacing the use of the term with other technical control parameters. This commenter referenced documents from the Coordinating Committee for Multilateral Export Controls (COCOM), including COCOM 1951 Administrative Principle 4, in supporting their position on the removal of ''specially designed'' from these ECCNs.

BIS response: BIS does not agree. These items will be submitted to the Wassenaar Arrangement for adoption as multilateral controls, so it is appropriate that they are placed in the ''000'' series. BIS also does not agree on the removal of ''specially designed.'' The term ''specially designed'' is needed in these ECCNs to define the intended scope of the control. In addition, BIS notes COCOM has been defunct since March 31, 1994.

Topic 32: A commenter noted that the WTOPs parameters need further study in ECCNs 3A991.p, 4A003, and 4A994.b and .l.

BIS response: BIS does not see an inconsistency between ECCN 4A994.b and 4A994.l. ECCN 4A994.b captures computers using 64-bit or greater processors, and 4A994.l captures processors with lower bit rates. BIS agrees that some items could be captured under both 4A994.b and 4A994.l but notes that there are computers that fall under 4A994.l but not 4A994.b.

License Exception Eligibility for New Advanced Computing and Semiconductor Manufacturing Items Under § 740.2(a)(9)

Topic 33: A commenter noted the October 7 IFR's limitations on the use of License Exception ENC are difficult to implement. The commenter noted that many of the items affected were already eligible for License Exception ENC, so removing license exception eligibility will be a challenge for items ''listed elsewhere in the CCL which meet or exceed the performance parameters of ECCN 3A090 or 4A090.'' This commenter requested that BIS consider amending the rule to create ECCNs 5x090 and 5x092 or additional items paragraphs in existing ECCNs for 5x002 and 5x992 items that meet or exceed the performance parameters of ECCN 3A090 or 4A090. This would allow industry to set up more manageable rules for their electronic inventory control and shipping systems.

BIS response: BIS agrees and addressed this with the addition of .z ''items'' paragraphs in nine ECCNs on the CCL, as described under the BIS response to Topic 30.

Topic 34: A commenter requested confirmation that License Exception Servicing and Replacement of parts and equipment (RPL) covers transfers (in-country), or in the alternative that § 740.2(a)(9) be expanded to authorize License Exception Temporary imports, exports, reexports, and transfers (in-country) (TMP). This commenter noted that the exclusion of ''transfer (in-country)'' from the scope of § 740.10 suggests that License Exception RPL would not cover in-country movements that constitute a transfer (in-country) as defined in § 734.16. Alternatively, this commenter requested that BIS expand the scope of license exceptions available for § 740.2(a)(9) to include License Exception TMP, specifically § 740.9(a)(6) which authorizes exports, reexports, and transfers (in-country) for inspection, test, calibration, and repair.

BIS response: Section 740.1(a) already specifies that any license exception authorizing reexports also authorizes in-country transfers, provided the terms and conditions for reexports under that license exception are met. This includes License Exception RPL. This SME IFR expands the number of license exceptions available for advanced compute items in § 740.2(a)(9)(ii) by adding License Exception TMP under § 740.9(a)(6) because this authorization is intended to work with License Exception RPL.

Level of Complexity of New FDP Rules

Topic 35: A commenter noted that the new FDP rules create significant complexity when manufacturing products outside the United States using U.S.-origin technology, software, tools, or equipment. The commenter noted that with the three new FDP rules, a non-U.S. manufacturer using U.S. technology or software must now know or have additional information about a number of things, including whether the item: (1) involves one of thirty-eight new ''Footnote 4'' companies on the Entity List; (2) is or contains an advanced IC that meets ECCN 3A090 or 4A090, or is their related software or

technology, and is ultimately destined for Macau or a destination specified in Country Group D:5; (3) will ultimately be used in a ''supercomputer'' in Macau or a destination specified in Country Group D:5; or (4) will be used in the development or production of an item that will ultimately be used in a ''supercomputer'' in Macau or a destination specified in Country Group D:5. Another commenter noted that because of the complexity there will likely be some non-compliance simply because foreign companies cannot understand or do not have enough information to make proper determinations. This commenter noted that this complexity will make compliance with the EAR difficult for non-U.S. manufacturers, many of whom will not comply, not out of maliciousness, but simple ignorance or misunderstanding.

BIS response: BIS agrees that with the addition of new FDP rules to the EAR, foreign manufacturers have increased compliance burdens. In adding new FDP rules, including the two new FDP rules and expanded Entity List FDP rule added in the October 7 IFR, BIS has tried to be as focused as possible. Accordingly, each FDP rule has its own criteria that needs to be reviewed. Each FDP rule essentially poses a series of questions or criteria; if one of the required questions or criteria is determined to be inapplicable, that FDP rule can be ruled out as governing the transaction. By taking this approach, many of the FDP rules can be ruled out fairly quickly. However, if the questions as to whether the criteria apply are answered in the affirmative, additional questions need to be asked based on the criteria of the respective FDP rule being reviewed to ultimately determine whether the foreign made direct product is subject to the EAR. BIS included a model certificate in the October 7 IFR to assist people in applying the FDP rules included in the October 7 IFR. In this AC/S IFR, the model certificate is broadened for use with all the FDP rules to ease the compliance burden on foreign manufacturers. BIS has been conducting a robust outreach program and updating its outreach materials on the BIS website to address these types of issues. As noted above, the basic approach to applying the FDP rules has been in the EAR for many years and has not changed with respect to the need to answer a series of questions. What is new is some of the additional criteria for the new FDP rules, in particular the end user and end use-based criteria included in some of the FDP rules. Once these additional criteria become familiar to foreign manufacturers and incorporated into compliance programs, these concerns should be reduced. BIS will conduct outreach on this rulemaking to assist exporters as they develop experience with the new controls.

Topic 36: A commenter noted that the FDP rules capturing least sensitive items will lead to designing out U.S.-origin content. Expanding the U.S. export control jurisdiction to less sensitive items also drives foreign partners away from U.S. technology, software, and tool suppliers, as those are the basis on which BIS hangs its expanded jurisdiction. The commenter requested that the China-focused FDP rules be narrowed to apply only to specific products that are listed on the CCL with a license requirement to China, and should never apply to EAR99 items or Anti-Terrorism (AT)-only controlled items.

BIS response: BIS does not agree that the scope of these FDP rules should be further narrowed. BIS calibrated the scope of the commodities controlled based on the current national security and foreign policy concerns. Because many of these lower-level items may be technology level agnostic, it is still warranted to keep them within the product scope of the FDP rules.

Clarify Relationship Between FDP Rules and Other EAR License Requirements

Topic 37: A commenter requested BIS clarify whether reexports or exports from abroad of FDP items also must consider other EAR license requirements in parts 742, 744, and 746.

BIS response: For a foreign-made product that is located outside of the United States to be subject to the EAR, the foreign made product would need to meet the criteria under one or more of the FDP rules under § 734.9 or be subject to the EAR because it exceeds the applicable *de minimis* threshold. If the foreign-made item is not subject to the EAR, then none of the other EAR license requirements would be applicable. However, if the export from abroad or reexport of the foreign-made item was subject to the EAR, then the other EAR license requirements would need to also be taken into account. Because the export from abroad or reexport would already require a license, the impact of those other license requirements would primarily be additional license review policies that may be applicable.

Need To Continuously Monitor the FDP Rules and revise license review Policies as Needed

Topic 38: A commenter noted that BIS needs to continuously monitor the effectiveness of the FDP rules, which are unilateral. The commenter noted that if BIS cannot succeed at getting allies and partners to agree to substantively similar controls, BIS should adopt a temporary licensing policy that would authorize the provision of such services and exports by U.S. persons for civil applications and if not otherwise prohibited by the EAR and readily available from non-U.S. providers, in both quantity and quality, as substitutes.

BIS response: BIS is continuously reviewing the FDP rules and will make any appropriate changes as warranted based on activity involving the adoption of multilateral and/or effective plurilateral controls, as well as trends BIS may be seeing or hearing about the designing out of U.S.-origin content.

Topic 39: One commenter raised issues related to the legality of the amendments made in the FDP rule provisions.

BIS response: BIS has determined that these changes are consistent with ECRA.

Topic 40: A commenter asked if a foreign-made item not otherwise subject to the EAR is nonetheless subject to the EAR under the Entity List FDP rule (§ 734.9(e)(2)) if it is shipped by an unlisted entity to another unlisted entity for incorporation into a commodity when the shipper knows all other components for the commodity had been shipped by a Footnote 4 entity, but the foreign-made item will not be incorporated into, or used to produce or develop, any commodity produced, purchased or ordered by a listed entity. This same commenter asked whether the answer would change if a Footnote 4 entity is a shareholder, or if a Footnote 4 entity is a shareholder in the third-party assembler/seller. Another commenter asked whether a Footnote 4 entity that profits from a transaction by and among unlisted entities, but has no other role or involvement, is a party to the transaction under § 734.9(e)(2)(ii)(B).

BIS response: The answer to these types of scenarios would be fact-specific. While the Footnote 4 entity described in these scenarios does not necessarily fall under one of the illustrative examples of parties to the transaction under § 734.9(e)(2)(ii)(B), additional analysis would be needed to determine whether the Footnote 4 entity was actually a party to the transaction. For example, if the items will ultimately be going to the Footnote 4 entity or ultimately for the Footnote 4 entity's use or if profits were obtained by the Footnote 4 entity acting as a purchaser, or intermediate or ultimate consignee, then the Footnote 4 entity would be considered a party to the transaction. In scenarios where a person is not sure

whether the Footnote 4 entity would be considered a party to a transaction, they may contact BIS to request additional guidance by identifying all of the relevant information that they have regarding the involvement of that party in the transaction.

Topic 41: A commenter asked whether BIS will consider providing guidance as to what other activities may constitute a Footnote 4 entity's being a ''party'' to the transaction for purposes of the Entity List FDP rule. We understand that the phrase ''*e.g.,* as a 'purchaser,' 'intermediate consignee,' 'ultimate consignee,' or 'end-user,' '' as used in § 734.9(e)(2)(ii)(B), signals that the list of referenced parties is not exhaustive. However, the use of ''*e.g.*'' creates significant compliance uncertainty.

BIS response: BIS confirms that this commenter is correct that the '*e.g.*' signifies that what follows is merely an illustrative list of parties to the transaction. If an exporter, reexporter, or transferor is determining whether an additional party that does not fill the role of one of the illustrative parties identified, but otherwise appears to be a party to the transaction, is a party to the transaction, they may submit an advisory opinion request to BIS in which they describe the role of that other party. BIS will advise if that party is considered a party to the transaction.

Advanced Computing FDP Rule—§ 734.9(h)

Topic 42: A commenter requested BIS clarify the relationship between § 734.9(h) and § 742.6 for ECCN 5A002 and License Exception ENC. This commenter noted that the EAR should in the Advanced Computing FDP, reference the license requirements under § 742.15 Encryption items (EI) controls because this is important for determining which additional EAR restrictions may be applicable. For example, § 740.2 restrictions may restrict the use of License Exception ENC.

BIS response: This AC/S IFR adds .z 'items' paragraphs to nine ECCNs, including to ECCN 5A002.z and makes conforming changes to add these .z ECCNs, such as 5A002.z, to § 734.9(h)(1)(i)(B)(*2*) or (h)(1)(ii)(B)(*2*), which is also responsive to this comment.

Topic 43: A commenter noted that the new § 734.9(h) Advanced computing FDP rule is not needed because it is already covered by pre-existing § 734.9(b) National Security FDP rule.

BIS response: BIS does not agree. There is some cross over between these two FDP rules, but the Advanced Computing FDP rule extends to certain items that the National Security FDP rule does not, so the Advanced Computing FDP rule is necessary to address the national security and foreign policy concerns included in the October 7 IFR.

Narrow the Scope of § 744.23 Fabrication Controls

Topic 44: A commenter noted that § 744.23 should only apply to the direct end use of an item. This commenter noted as an example that networking equipment used for the enterprise network of a semiconductor or supercomputer manufacturer is not a direct use in the ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' or IC as opposed to design software, materials, or test equipment and should be excluded from the license requirement.

BIS response: BIS agrees that if the item is not used in the ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer,'' IC, or SME, as applicable, the item would not be within the scope of § 744.23. However, the exporter would need to analyze the relationship between the activities involving the enterprise network and any prohibited end uses to confirm no license is required.

Topic 45: A commenter noted that resellers of supercomputers should not meet the definition of a company that is involved in the ''development,'' ''production,'' ''use,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' under § 744.23.

BIS response: BIS agrees and confirms in this AC/S IFR that the mere act of selling a ''supercomputer'' is not within the prohibited scope of § 744.23, but selling a ''supercomputer'' with knowledge that a violation of § 744.23 has occurred, is about to occur, or is intended to occur in connection with an item subject to the EAR could be a violation of § 764.2(e) of the EAR.

As-a-Service (IaaS) Solutions and the October 7 Controls

Topic 46: A commenter noted that PRC ''supercomputer'' controls may be bypassed by as-a-Service (IaaS) solutions. The commenter noted that the October 7 IFR limits engagements towards China ''supercomputer'' activity in China and may preclude some high-performance compute capability to China. With the availability of IaaS solutions, however, China compute workloads can be offloaded to computers located in other states, possibly including those in the United States. This commenter noted that without a multilateral end use/end user control, non-U.S. states, even Wassenaar Arrangement partners, may give China computational access to their equivalent ''supercomputers'' via an IaaS arrangement. The commenter noted that while § 744.6 provides controls on U.S. persons for various situations involving PRC semiconductor fabrication, there does not appear to be a parallel U.S. person control for supercomputing.

This comment requests that BIS clarify intent regarding supercomputing IaaS, particularly in light of previous Advisory Opinions on computing IaaS, including January 2009: Application of EAR to Grid and Cloud Computing Services, and January 2011: Cloud Computing and Deemed Exports.

BIS response: BIS is also concerned regarding the potential for China to use IaaS solutions to undermine the effectiveness of the October 7 IFR controls and continues to evaluate how it may approach this through a regulatory response. See section D question 1 of this rule.

Information Needed From Other Parties To Comply With These Controls

Topic 47: A commenter noted that the burden to detect upgrades of PRC computers into ''supercomputers'' is difficult because it is a fluid moving target and that a PRC computer installation that does not meet the threshold at one point may be quietly upgraded by the operator (using 3rd party items) to exceed the ''supercomputer'' threshold later. Exporters, reexporters, and transferors may not be able to rely on static End Use Statements or similar certifications, due to this ''moving target'' characteristic and this may require exporters to obtain End Use Statements to all PRC computer installations (regardless of size) for every transaction, which presents a high burden. The commenter notes this is a situation in which publishing a list of known § 744.23 supercomputer targets will result in compliance that is more effective, more consistent, and less burdensome.

BIS response: BIS intends to continue to identify ''supercomputer'' related entities on the Entity List. BIS started this process in the October 7 IFR and will continue adding more ''supercomputer'' entities as they are

identified and approved for addition by the ERC to the Entity List. BIS emphasizes that § 744.23 and the expanded § 744.6 both contain ''knowledge'' provisions. The compliance expectation is that exporters, reexporters, and transferors will evaluate the information coming to them in the normal course of business. Obtaining end-user statements is a good compliance practice that BIS encourages, but BIS does not expect that exporters, reexporters, or transferors will obtain these from every computer user in China, so exporters, reexporters, and transferors should look at all information they have to determine when additional due diligence may be warranted.

Topic 48: A commenter requested that BIS confirm that the due diligence specified in BIS FAQ, IV.A2, ''Appropriate due diligence includes review of publicly available information, capability of items to be provided or serviced, proprietary market data, and end-use statements'' constitutes a reasonable level of due diligence in this context, as well.

BIS response: BIS confirms here that the same type of due diligence specified in BIS FAQ IV.A2 that applies for § 744.6 also applies to § 744.23.

Permit License Exception Eligibility

Topic 49: A commenter requested BIS revise § 744.23(c) to permit the use of license exceptions specified in § 740.2(a)(9) for items lawfully exported or reexported prior to October 7, 2022.

BIS response: BIS does not agree. Not including License Exceptions RPL and TMP in § 744.23(c) will make the controls more effective because of the importance of parts and components to continued operation of items, which may have been received by indigenous companies in China without a required license prior to the October 7 IFR. Based on the national security and foreign policy concerns identified in the October 7 IFR, BIS would no longer support the use of these EAR items in China.

Other Requested Clarifications to § 744.23

Topic 50: A commenter requested BIS confirm that standalone data storage equipment would not be considered a ''component'' subject to § 744.23(a)(1)(ii), which has been redesignated as paragraph (a)(1)(ii)(B) in this SME IFR. This commenter noted that the data storage equipment is self-contained and not physically incorporated into a computer (*e.g.,* it consists of a storage controller and an array of storage drives in a separate enclosure).

BIS response: BIS does not agree. BIS does not consider standalone data storage equipment classified as ECCN 5A002 to be controlled under § 744.23(a)(1)(ii), now redesignated as (a)(1)(ii)(B), because standalone storage equipment is not a computer or component of a computer. Standalone data storage equipment classified as ECCN 5A002 is considered a ''component'' for purposes of § 744.23(a)(1)(ii)(B). This SME IFR clarifies this point by adding ''the incorporation into, or the ''development'' or ''production'' of any ''component'' or ''equipment'' that will be used in, a ''supercomputer'' '' to make it clear that § 744.23(a)(1)(ii)(B) is intended to cover ''components'' of a separate computer going into a supercomputer, *e.g.,* a chip going into a server which is going into a supercomputer.

Topic 51: A commenter requested that BIS clarify how broadly exporters may interpret the term ''used'' in determining the product scope under § 744.23(a)(1), which has been redesignated as paragraph (a)(1)(i) in this SME IFR. This commenter seeks confirmation that their understanding is correct that any product that does not contribute to the ''development'' and ''production'' of the product would fall outside the scope of these controls. For example, storage devices and networking devices may be present in a facility, but they are not ''used'' for the specified end use, and therefore would not be subject to control under this provision and can be exported without a license. Other examples include so-called Facility Monitoring and Control Systems (*e.g.,* HVAC, clean room temperature, and chillers, pumps and boilers, as well as so-called voltage sag correctors, which provide protection for electric equipment from voltage variations).

BIS response: Section 744.23(a) specifies that the license requirements apply when the item will be used in an end use described under paragraph (a)(2)(i) or (ii) of this section, which has been redesignated as paragraph (a)(1)(ii)(A) and (B) in this SME IFR. The terms ''development'' and ''production'' encompass all of the items used in those activities, so BIS takes an expansive view of what items would be caught under those terms.

Topic 52: A commenter asked BIS to confirm whether the scope and reach of § 744.23(a)(2)(iii), which has been redesignated as paragraph (a)(2)(i) in this SME IFR, apply equally to application of the controls over the shipment from outside the United States of foreign-origin items not subject to the EAR under the requirements of § 744.6(c)(2)(i) and (ii).

BIS response: For purposes of the ''U.S. person'' prohibition under § 744.6(c)(2)(i) and (ii), BIS will attempt to maintain consistent approaches in interpreting §§ 744.6(c)(2) and 744.23. BIS's response to Topic 61 on § 744.23, which lays out how BIS would interpret § 744.6(c)(2) for a similar fact pattern involving the U.S. person control.

Topic 53: A commenter requested BIS clarify whether the controls extend to projected future activity not yet started under § 744.23(a)(2)(iii) and (iv), which have been redesignated as paragraphs (a)(2)(i) and (ii) in this SME IFR. The commenter noted that there is confusion regarding the proper tense of the rules and asks whether the language as written includes aspirational production and development in the future. BIS should clarify whether ''fabricates'' applies in the context of a fabrication facility that has plans for future advanced node production or whether the rule applies to current advanced node production only.

BIS response: Aspirational development or production in the future would raise a red flag that would require additional due diligence to determine whether a license is required under § 744.23(a)(2)(iii) and (iv), which have been redesignated as paragraphs (a)(2)(i) and (ii) in this SME IFR. This AC/S IFR adds a new red flag to provide additional compliance guidance on these types of scenarios.

Entity List Changes for Footnote 4 Entities

Topic 54: A commenter noted that it is not clear what specific activities involving expanded Entity List (Footnote 4) entities may be prohibited, assuming the product scope is met, especially if the activity does not involve providing any products to the Footnote 4 entity and the entity is not a party to the transaction between the parties buying and providing the foreign-made item.

BIS response: The Entity List license requirements apply to exports, reexports, and transfers (in-country) that are subject to the EAR when a listed entity is a party to the transaction. This is also the scope of the license requirement for the entities on the Entity List with a footnote 4 designation, but because of the footnote 4 designation, the license requirement specified in § 744.11(a)(2)(ii) (Footnote 4 entities) is also applicable, which specifies a license is required for reexport, export from abroad, or transfer

(in-country) of any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to this part is a party to the transaction, or that will be used in the ''development'' or ''production'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any such entity. Section 744.11(a)(2)(ii) also includes a cross reference to § 744.23 for additional license requirements that may apply to these entities, so the § 744.23 license requirements also need to be taken into account.

Topic 55: A commenter noted that § 744.11 states that a license is required for the incorporation of a foreign-made item into any ''part,'' ''component,'' or ''equipment,'' produced by a Footnote 4 entity. However, BIS does not specify if a license is needed for a scenario in which a third-party procures parts, components, or equipment made by a Footnote 4 entity and incorporates a foreign made item into Footnote 4's product, and the procedure is not done on behalf of the Footnote 4 entity, nor will the final product be destined for a Footnote 4 entity. The commenter requests BIS release additional clarification on whether license requirements apply to sales to third parties assembling a mixture of foreign-made and Footnote 4 entity components that are not destined for a footnote 4 entity.

BIS response: The license requirement under § 744.11(a)(2)(ii) extends to items that will be used in the ''development'' or ''production'' of any ''part,'' ''component,'' or ''equipment'' produced by any such entity. Therefore, in a scenario in which a third-party procures items produced by a Footnote 4 entity and adds to it using a foreign-made item, the license requirements would still apply in that scenario to that foreign-made item because even if the Footnote 4 entity is not subsequently receiving the items or receiving compensation from the third-party that used its item, the further processing using the foreign-made item would be part of the larger ''production'' process of the Footnote 4 entity.

Topic 56: A commenter requested BIS revise the 28 Entity List footnote entries to address an inconsistency in the license requirement by inserting ''for additional license requirements for Foreign-Direct Product)'' after ''(See § 734.9(e) and 744.11 of the EAR).''

BIS response: BIS does not agree that a change needs to be added to these entities. The Footnote 4 text provides additional context on the meaning and scope of this parenthetical phrase included in the 28 entities.

Requested Changes or Clarifications to ''Supercomputers'' Definition in § 772.1

Topic 57: A commenter requested BIS clarify what is intended by closely coupled compute cores in Note 2 of the ''supercomputers'' definition. Specifically, the commenter asks BIS to clarify whether ''closely coupled compute cores'' refers to a system in which all hardware and software components are linked together and dependent on one another and whether the type of interconnect is relevant to this analysis.

BIS response: Note 2 of the ''supercomputer'' definition is meant to provide a general statement of scope of a typical supercomputer. It is not intended to impose additional requirements beyond the main definition. By using the term ''closely coupled compute cores,'' BIS intended to note that supercomputers typically have thousands of cores working in parallel in the same location and connected by a high-speed interconnect such as Infiniband or Ethernet. BIS also intended to make clear that computers that are connected together through the internet over long distances are not the type of computer that would meet the definition of ''supercomputer.''

Topic 58: A commenter requested that BIS identify the items of real concern regarding the ''supercomputer'' end use. Hitting the threshold of ''supercomputer'' is not difficult, and when triggered under the October 7 IFR, even items included in 5A992 will be prohibited. The commenter noted that could prohibit even a standard laptop from being shipped if it is somehow being ''used'' in a supercomputer.

BIS response: BIS does not agree that the area of concern for supercomputers was not adequately identified in the October 7 IFR and the definition of ''supercomputer'' in § 772.1. The definition includes clear technical parameters for the types of supercomputers that are of concern. Specifically, a computing ''system'' having a collective maximum theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops within a 41,600 ft^3 or smaller envelope. The definition includes Note 1 and 2 to further clarify the types of computers of concern. The preamble of the October 7 IFR identified the national security and foreign policy concerns associated with a computer system that can operate at these levels.

Requested Changes or Clarifications to Other Definitions

Topic 59: A commenter noted that the definition of ''transfer (in-country)'' should not cover in-country movements to effectuate repair services. This commenter noted that in considering whether an in-country movement constitutes a change in end user, this commenter believes that an entity performing repairs or otherwise servicing an item is not an ''end user'' as defined in part 772 of the EAR. Specifically, the repair/service company is not the party that ultimately uses the item, but is instead taking an action on behalf of the user and specifically for the purpose of returning the repaired item to the user. As a service/repair company does not fall within the scope of an end user under the EAR, temporary in-country movements to or from repair/service companies should not constitute a change in end user.

BIS response: This commenter's understanding of the scope of transfer (in-country) is not correct and is inconsistent with long-standing agency interpretation of the scope of transfer (in-country). The person that receives the item is changing the end use of the item by using the item for a repair or servicing of the item, or, in the case of destruction, for destroying the item. The definition of end user includes the phrase ''ultimately uses the item,'' but does not specify that the item needs to be used for its intended end use. Someone repairing or servicing an item is using the item for a different purpose. Someone that is destroying an item is using the item for a specific purpose—the destruction of the item. Even transferring the item to another party for storage (a type of end use) would be considered a change in end use and end user because that other party would be using the item by storing it for future use by another party. BIS notes that one exception to this would be if another party came to service or destroy an item at the location of the authorized end user, such as coming to repair or to destroy a machine tool that would not be considered a transfer (in-country), provided the authorized end user maintained possession and control of the item at their facility. For most transfers (in-country), such as when an item is received under a BIS license and needs to be transferred (in-country) to a repair center, paragraph (a)(6) of License Exception TMP is used to authorize the transfer (in-country) to a repair facility and License Exception RPL is used to authorize the transfer (in-country) back to the original party. However, for the part 744 end use and end user controls,

License Exceptions TMP and RPL are not available, so a license is required for that activity. Lastly, BIS adds that if the item had been received with no license requirement (*i.e.,* No License Required (NLR)) or under authorization of a license exception that did not have terms specific to end use or end user, such as License Exception GBS (not applicable for China, but included as an example), then a transfer (in-country) to a repair center would not require an authorization, provided there were no parts 744 or 746 license requirements applicable that applied to transfers (in-country). BIS also highlights that because the RS license requirement under § 744.6(a)(6) extends to transfers (in-country) for the items controlled for RS in this AC/S IFR and SME IFR that an EAR authorization is required for all transfers (in-country) of items subject to the EAR unless the original authorization also authorizes subsequent transfers (in-country), *e.g.,* if a 3A090.a item was received under a BIS license by an ultimate consignee listed on the license and was being transferred within China to authorized end users on the license.

Appropriateness of the Scope of U.S. Person Control

Topic 60: A commenter noted that the October 7 IFR is overly broad, particularly with respect to the prohibitions on U.S. person ''support'' for certain semiconductor manufacturing activities in § 744.6(c)(2). In the absence of clear scoping restrictions, these broad controls create difficulty for U.S. companies and individuals trying to comply and make it almost impossible for them to understand what they can and cannot do.

BIS response: This AC/S IFR has narrowed the scope of § 744.6 where warranted to better focus the controls on activities of national security concern. This rule has also clarified the scope of ''U.S. person'' activities that are caught, which incorporates FAQs previously published on the BIS website. Additional discussion of amendments to § 744.6 can be found in Section C.4 of this rule.

Topic 61: A commenter noted that a ''U.S. person'' should not have to obtain a license under § 744.23(a)(2)(iv) because an item could potentially be used in an end use of concern. This commenter asked why a U.S. person with no knowledge of a proscribed activity, but with knowledge of a non-proscribed activity for a dual use computer or IC, should be required to seek a license involving a non-U.S.-origin item, simply because of a BIS theory, based on no knowledge, that the activity ''could involve'' WMD use.

BIS response: The ''U.S. person'' would have a ''knowledge'' under § 744.6(c)(2)(iv), now redesignated as § 744.6(c)(2)(ii), that the CCL Category 3, B, C, D, or E item was for use for ''development'' or ''production'' of integrated circuits at a ''facility,'' which this SME IFR updates to ''of an entity headquartered in either Macau or a destination specified in Country Group D:5.'' When this SME IFR and AC/S IFR use the term ''headquartered'' in these two rules, it includes parent entities. China's use of ICs in WMD-related activities warrants imposition of a higher level of affirmative duty to ''know'' in order to not be subject to a license requirement.

''U.S. Person'' Control Due Diligence Requirements, as Well as Certain Limitations on Foreign Companies Identifying People by Nationality

Topic 62: Some commenters noted that requiring positive knowledge is a burden shift for an end use control. This commenter noted that the § 744.6(c)(2)(iv)–(vi) requirement represents an unprecedented burden shift. Whereas BIS has previously required that companies not engage in willful blindness or ignorance regarding the end use of their exports, this component of the rule effectively mandates diligence via a licensing requirement.

BIS response: BIS does not agree with these commenters that the control requiring positive knowledge is unprecedented. For example, § 744.3(a)(3) (which has been in the EAR for about 19 years) imposes a license requirement for all items subject to the EAR when the exporter, reexporter, or transferor has ''knowledge'' that the item subject to the EAR ''will be used in the design, ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of any rocket systems or unmanned aerial vehicles in or by a country listed in Country Group D:4, but you are unable to determine the characteristics (*i.e.,* range capabilities) of the rocket systems or unmanned aerial vehicles, or whether the rocket systems or unmanned aerial vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.'' A more recent example that was added in 2014 to part 746 under § 746.5(a)(1)(i) specifies that a license is required to export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to this part and items specified in ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999 when you ''know'' that the item will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia or Belarus, or are unable to determine whether the item will be used in such projects.

Topic 63: A commenter noted that for the first time, BIS has used the EAR to inform all U.S. persons around the globe that certain specific activities of U.S. persons are regulated because they could support prohibited WMD activities in China. This commenter noted that the regulated activities all involve shipping, transmitting, transferring (in-country), or servicing, or facilitating the shipment, transmission, or transfer (in-country), of certain items that are ''not subject to the EAR'' to or within China.

BIS response: BIS does not agree. The regulated activities are consistent with other regulated activities under § 744.6 and the activities are being regulated because they could support prohibited WMD activities in China and Macau.

Topic 64: A commenter noted that many foreign employers do not track whether persons are U.S. persons, which will make it harder to comply with these U.S. person controls. The application of these new controls will be complicated, as U.S. person status is not widely maintained by non-U.S. employers. These new controls raise certain specific practical implementation concerns.

BIS response: BIS does not agree that a ''U.S. person'' restriction applies to a non-U.S. person entity (*e.g.,* a foreign corporation) that employs the U.S. person, unless the entity had knowledge of the individual's U.S. person status and that the individual was in violation of an applicable U.S. person control. While a corporation may not track the U.S. person status of its personnel, a natural person would be positioned to ''know'' whether they were a ''U.S. person.''

U.S. Person Control Impact on U.S. Persons Working Outside the U.S. and on Innovation

Topic 65: A commenter noted that without clarification as to the scope of what U.S. person activities constitute support for the development of certain advanced semiconductors and associated technologies in China, § 744.6(c)(2) will have a chilling effect on U.S. academic collaborations with universities in China as well as on U.S. university recruitment of highly

qualified students and researchers from China in the semiconductor field. This may detrimentally impact U.S. leadership and competitiveness in the advanced semiconductor sector. Another commenter noted that the U.S. person control may result in companies not hiring U.S. persons. This commenter noted that despite added clarifications from BIS regarding the scope of these restrictions, the relevant provisions continue to be mired in uncertainty. Companies, consequently, may choose to interpret the U.S. persons provisions broadly, and needlessly restrict their U.S. person employees and contractors from engaging in a number of business-critical functions, which prevents such persons from participating fully in company operations. In any event, U.S. person individuals can often be readily replaced by non-U.S. person individuals without impeding the shipment of non-EAR items to a covered fabrication facility.

BIS response: The intent of the October 7 IFR and this AC/S IFR and SME IFR is to impose controls as focused as possible in addressing the ongoing U.S. national security and foreign policy concerns discussed in these rules. BIS does not intend the new controls to chill research by U.S. universities or undercut U.S. technological leadership where such activity does not present national security or foreign policy concerns. With its initial FAQs on the October 7 IFR, BIS clarified the intended scope of the ''U.S. persons'' controls. This AC/S IFR adds those clarifications to the EAR. In addition, this AC/S IFR clarifies that the scope of § 744.6 does not include information or software that would otherwise be excluded from the EAR based on the exclusion criteria under part 734, *e.g.,* under § 734.7 Published and § 734.8 ''Technology'' or ''software'' that arises during, or results from, fundamental research, as well as specifying this in § 744.6(d)(1)(ii). BIS does not intend for the October 7 IFR controls to result in foreign companies not wanting to hire ''U.S. persons.'' BIS believes the clarifications made to § 744.6 in this AC/S IFR and SME IFR should reduce these concerns. The U.S. person changes made in this rule are discussed in Section C.4.

Topic 66: A commenter noted that the U.S. person control has broad applicability to many people outside the U.S. and could be discriminatory to them. It is important for BIS to take into account that many individuals located abroad fall within the definition of ''U.S person'' even if they have never lived in the United States or are currently permanently residing outside of the U.S. and these individuals should not be singled out due to their citizenship, which can lead to discrimination and other claims under the laws of certain countries.

BIS response: The intent of the October 7 IFR was to be as focused as possible in addressing ongoing U.S. national security and foreign policy concerns. Being a ''U.S. person'' has many benefits, but also certain responsibilities that go along with being a ''U.S. person,'' such as not being involved in specified activities that are of concern for WMD reasons as specified under § 744.6. The U.S. Department of Treasury's Office of Foreign Assets Controls (OFAC) also has certain responsibilities and restrictions that go along with being a U.S. person, so BIS also directs commenters in this area to review the applicable OFAC controls on U.S. persons that may be applicable.

Whether To Use Export, Reexport, and Transfer (In-Country) Controls or a U.S. Person Control To Address This National Security Issue

Topic 67: A commenter requested that the new restrictions on semiconductor manufacturing be implemented solely through BIS's traditional jurisdiction over exports, reexports, and transfers (in-country) of items subject to the EAR, rather than a new, untested, and overly broad restriction on U.S. person ''support'' activities.

BIS response: The national security and foreign policy concerns addressed in the October 7 IFR required that BIS use its full set of regulatory tools under the EAR, which included using CCL-based controls, end-use controls, and end-user controls. For the end-use controls, BIS used both a standard end-use control and expanded the ''U.S. person'' control to appropriately address its concerns. This AC/S IFR and SME IFR have focused and clarified the scope of both §§ 744.6 and 744.23.

Provide More Information on Restricted U.S. Person Activities

Topic 68: A commenter requested BIS amend the list of controlled activities to specify whether additional business processes are controlled or not. This commenter noted that doing so will decrease compliance delays arising from ambiguous language. For example, it is not clear if restrictions apply to a U.S. person that processes product payments but does not conduct physical transfer of subject items.

BIS response: This AC/S IFR adds paragraph (c)(3) (Scope of activities of ''U.S. persons'' that require a license under § 744.6(c)(2) of the EAR), including sub-paragraph (c)(3)(i) that provides greater specificity on the ''U.S. person'' activities that are caught, consistent with the FAQs posted on the BIS website on January 25, 2023 on the scope of the ''U.S. persons'' control in § 744.6(c)(2). This AC/S IFR adds paragraph (c)(3)(ii) (*Due diligence*) to provide compliance guidance for this ''U.S. person'' control, and adds paragraph (d)(1) (*Exclusion of certain administrative and clerical activities*) to add greater specificity on the ''U.S. person'' activities that are excluded.

U.S. Persons Giving Up U.S. Citizenship or Permanent Residency in Order To Participate in PRC Innovation Efforts

Topic 69: A commenter noted that some U.S. persons may give up their U.S. nationality to help China build advanced semiconductors, and they would be compensated by the PRC government to obtain a third country passport. This commenter noted in this scenario that the now-former U.S. persons' spouses may still be U.S. citizens, so these persons will be able to return to the United States when they retire after making money in China. This commenter believes this is a very clear loophole in the October 7 IFR.

BIS response: The October 7 IFR and this AC/S IFR and SME IFR used the various export control tools that BIS has under its jurisdiction to address U.S. national security and foreign policy concerns. BIS included an expanded ''U.S. person'' control because of its concerns that these types of items that are being used by China are part of their WMD programs. BIS highly discourages any ''U.S. person'' from relinquishing U.S. nationality to help China engage in military advancement and human rights violations. BIS does not have regulatory authority over immigration matters, so BIS is not positioned to respond to that aspect of the comment. However, being a U.S. citizen or legal permanent resident of the U.S. has certain benefits and legal rights that are not afforded to foreign persons. BIS cautions anyone that is considering giving up their U.S. nationality for purposes of work in the advanced semiconductor industry in China to weigh those considerations carefully and not assume they would be able to return to the United States following participation in activities contrary to U.S. national security and foreign policy interests. BIS also notes that a person who relinquished their U.S. nationality would become a foreign person for purposes of ERC assessment.

Meaning and Scope of 'Support' Under U.S. Person Control in § 744.6(b)(6)

Topic 70: A commenter noted that the exact definition of ''support'' is not clear under the October 7 IFR. BIS should consider reconfiguring certain definitions to factor in business processes in the logistics sector. This commenter requested that BIS publish additional guidance on how logistics firms can understand and apply ''support'' requirements to their supply chains without inducing severe operational disruptions.

BIS response: The term 'support' is defined for purposes of § 744.6 under paragraph (b)(6). BIS also notes that the term 'support' is not a new term added in the October 7 IFR. However, based on the comments received in response to the October 7 IFR, BIS agrees that additional clarifications should be made on what types of activities involving 'support' are excluded, such as certain logistics activities. This AC/S IFR states here that for logistics companies, the prohibited act is the actual delivery, by shipment, transmittal, or transfer (in-country), of the item and the act of authorizing the same.

Topic 71: A commenter noted that § 744.6 prohibits U.S. persons from providing ''support'' for WMD-related end uses and § 744.6(c) provides that certain specified activities by U.S. persons involving items not subject to the EAR used in semiconductor fabrication could involve ''support'' for a prohibited WMD-related end use, but it does not say that these specified activities are the only activities by U.S. persons related to semiconductor fabrication that are considered prohibited ''support'' for WMD-related end uses.

BIS response: This commenter misses the intent of the phrase ''which could involve 'support' for the [WMD]-related end uses set forth in paragraph (b) of this section'' in the introductory text of § 744.6(c)(2). The prohibition under § 744.6(c)(2) is limited to the exhaustive listing of 'support' activities defined under § 744.6(b)(6). The phrase ''which could involve'' is an acknowledgement that in certain cases these activities described under § 744.6(c)(2) may not involve WMD-related activities, but BIS believes that there is a significant possibility that in Macau or a destination specified in Country Group D:5 such end-uses could involve WMD-related activities. In cases in which a ''U.S. person'' believes the prohibited activity does not involve a WMD-related activity, the ''U.S. person'' can set forth its reasoning in the license application.

Topic 72: A commenter asked BIS to confirm whether expediting a part or component shipment with a supplier or vendor, by a ''U.S. person,'' is within the scope of the controls in § 744.6 or § 744.23 if there is knowledge that such a part or component will be exported, reexported, or transferred to a covered fabrication facility. Another commenter noted that it is unclear whether the reference to ''support'' in § 744.6(c)(2) incorporates all of the definitions of ''support'' under § 744.6(b)(6) in the activities that are prohibited under § 744.6(c)(2).

BIS response: For the comment regarding expediting a part or component, whether that activity is captured would depend on whether the act was limited to a U.S. person conducting administrative or clerical activities or otherwise implementing a decision already approved by other persons, consistent with § 744.6(d)(1)(i), added in this rule. In addition, the reference to ''support'' in § 744.6(c)(2) incorporates all of the definitions of ''support'' under § 744.6(b)(6) in the activities that are prohibited under § 744.6(c)(2).

BIS Has Experience With Regulating Facilitating, but Should Adopt a Definition That Is Narrower Than That Used by OFAC

Topic 73: A commenter noted that restrictions on exports of services by U.S. persons are traditionally administered by OFAC, which has accordingly developed a framework of guidance and authorizations over time to facilitate the implementation of these restrictions. Some commenters noted that the scope of ''facilitate'' should be narrower under EAR than under the OFAC sanctions. These commenters noted that while BIS and OFAC share some overlapping jurisdiction, the underlying statutory authorities for the EAR and the OFAC regulations are no longer aligned—the current EAR is legally framed by ECRA, not the International Emergency Economic Powers Act (IEEPA). These commenters noted that this distinction underscores that controls on ''facilitation'' or ''facilitating'' enacted by BIS under the authority of the EAR or ECRA must be more limited than controls imposed by OFAC under IEEPA's broad authority.

BIS response: BIS has long experience with regulating activity using the term facilitating as Section 744.6 has been in the EAR since the early 1990s. Use of this term under the EAR is specific to BIS, and other interpretations from other agencies are not applicable under the EAR. Moreover, BIS interpretations should not be applied to the regulations of any other export control agencies, such as OFAC. Questions on the use of OFAC regulations terminology should be directed to OFAC.

Topic 74: A commenter requested BIS adopt the definition of 'facilitation' as, ''Authorizing, servicing, and conducting support on the production of advanced nodes.'' Another commenter requested that facilitating should be replaced with the term authorizing if that is what is really intended, noting that BIS guidance indicates that ''facilitating'' such activities means ''authorizing'' such activities. Without such an amendment, U.S. persons can be unnecessarily cut out from fully engaging in the business of their employer.

BIS response: The term 'facilitation' in the context of § 744.6(b)(6)(iii) has broader application than to just paragraph (c)(2), so it would not be appropriate to adopt the suggested definitions. Authorizing is an important part of the scope of facilitating, but there are additional activities that fall under facilitating that also need to be caught, so removing facilitating and adding in its place authorizing is not accepted.

Meaning and Scope of Definition of 'Production'

Topic 75: A commenter requested that BIS provide an exact definition of ''production'' because it is not clear under the October 7 IFR.

BIS response: ''Production'' is a foundational EAR term that is already defined in § 772.1. The term is also defined and used in the multilateral export control regimes. As a result, there should be no ambiguity in how the term is used and no need for an additional definition for this term.

Meaning and Scope of Definition of 'Servicing'

Topic 76: A commenter requested that BIS provide an exact definition of ''servicing'' because it is not clear under the October 7 IFR.

BIS response: The term servicing has been used in the EAR for many decades and in various EAR provisions, such as under License Exception RPL under §§ 740.10 and 764.2(e), and in General Prohibition 10 under § 736.2(b)(10). This term is intended to have an expansive meaning and BIS believes it is well understood in the context of the EAR. For example, in the context of License Exception RPL, servicing means inspection, testing, calibration or repair, including overhaul and reconditioning (see § 740.10(b)(2)(i)). BIS has also provided guidance through FAQs on the October 7 IFR on what U.S. person activities are captured by servicing for

purposes of § 744.6. BIS interprets the meaning of servicing in the context of § 744.6 consistent with the expansive definition provided under License Exception RPL.

Scope of Information Covered Under the ''U.S. Person'' Control

Topic 77: Commenter requests that BIS clarify the scope of ''any item not subject to the EAR'' in § 744.6(c)(2) to specifically exclude technology and software that is published and/or that arises during or results from fundamental research. Another commenter is concerned that, without further clarification from BIS regarding the scope of ''support'' and ''facilitating,'' these terms could be interpreted to include core university activities such as training and teaching students and researchers from China in the United States. This commenter requests that BIS expand FAQ IV.A2 to further clarify that these terms do not include training and teaching of students and researchers from China in the United States.

BIS response: BIS agrees. As noted above, this AC/S IFR in responding to these comments clarifies that the scope of § 744.6(c)(2) does not include information or software that would otherwise be excluded from the EAR based on the exclusion criteria under part 734, *e.g.,* under § 734.7 Published and § 734.8 ''Technology'' or ''software'' that arises during, or results from, fundamental research, which this AC/S IFR specifies in § 744.6(d)(1)(ii).

Exclude Certain Activities When Employer Has a BIS Authorization To Engage in Those Activities

Topic 78: A commenter requested BIS issue guidance that activities of U.S. persons in support of licensed activities by their employer are excluded from the scope of the controls. It would be unfortunate for a U.S. person to unintentionally violate the EAR because the items subject to the EAR that they are exporting or reexporting subject to a BIS license happen to include an item that was not subject to the EAR, such as bundled software or a spare part.

BIS response: BIS clarifies here in this AC/S IFR that existing BIS licenses would also cover such ''U.S. person'' activities as described in the commenter's scenario. BIS cautions that if the activity being provided goes outside the scope of the BIS license, then a separate analysis of that ''U.S. person'' activity must be conducted.

C. Expansion of Export Controls on Advanced Computing Items and Supercomputers

This section describes the specific EAR revisions adopted in this IFR, which expand and refine the October 7 IFR with respect to advanced computing items and supercomputers, and addresses the national security concerns that led to an expansion of the country scope for these commodities and related software and technology.

Overview of EAR Changes

This AC/S IFR revises ECCN 3A090 to remove paragraph a, including paragraphs a.1 through a.4, and adds in its place a simplified control paragraph. Those changes, as well as a conforming change to ECCN 3A991.p, are discussed below in section C.1 of this rule. This rule also introduces License Exception Notified Advanced Computing (NAC), which is discussed in section C.2. In response to public comments, the rule also replaces the criteria ''any other item on CCL that meet or exceed the performance parameters of 3A090 or 4A090'' by positively identifying those ECCNs in new .z paragraphs, along with various conforming changes related to the new .z paragraphs in other parts of the EAR. The public comments on this issue are described in section B under Topics 19–24; additional details about those changes, and the accompanying conforming changes including to the Automated Export System (AES), can be found in section C.3.

In addition, this rule broadens the country scope for the Regional Stability controls to destinations specified in Country Groups D:1, D:4, and D:5 in supplement no. 1 to part 740 that are not also specified in Country Groups A:5 or A:6 and amends the licensing policy, as described in section C.4. Section C.5 discusses clarifications to the scope of ''U.S. person'' and end-use controls related to supercomputers and advanced computing items. Section 744.23 is expanded to capture PRC operations outside of China in light of ongoing national security concerns related to diversion and misuse of items subject to the EAR; those changes are discussed in section C.6. As discussed in section C.7, this rule adds ECCNs 3A991.p and 4A994.l to License Exception Consumer Communication Device (CCD).

As discussed in section C.8, this rule also broadens the country scope with respect to the advanced computing FDP rule to destinations specified in Country Groups D:1, D:4, and D:5 that are not also specified in Country Groups A:5 or A:6. Section C.9 describes changes clarifying that the model certificate published in the October 7 IFR may be used for all FDP rules. Section C.10 discusses changes to enhance compliance, including the addition of five new red flags to assist with compliance, including adding a red flag for enhanced FDP guidance for recognizing ''direct products.'' The addition of one new TGL is described in section C.11. Additional corrections and clarifications made in this rule are described in section C.12.

Lastly, BIS requests specific comments on several issues, which are listed and described in section D.

National Security and Foreign Policy Considerations for Expanding Controls and Country Scope

As noted earlier in the rule, these advanced or frontier AI capabilities, such as large dual-use AI foundation models with capabilities of concern are particularly problematic because their use can lead to improved design and execution of WMD and advanced conventional weapons. Military decision-making aided by these AI models can improve speed, accuracy, planning, and logistics. The use of such items in development and deployment of these AI models would further China's goals of surpassing the military capability of the United States and its allies, a goal noted in the February 6, 2023 Annual Threat Assessment of the U.S. Intelligence Community. That same report indicated that ''China is rapidly expanding and improving its artificial intelligence (AI) and big data analytics capabilities, which could expand beyond domestic use.'' These national security concerns were paramount in the issuance of this AC/S IFR.

Consistent with the national security and foreign policy concerns described in the October 7 IFR, BIS is updating the EAR to enhance effectiveness of the controls in addressing these ongoing concerns. Following the implementation of the controls last year, BIS continued to study and assess their effectiveness. This rule strengthens and improves those controls by addressing the national security considerations that have come to light through open-source reporting, public comments, and the intelligence community. Through this process, BIS learned that certain additional ICs could provide nearly comparable AI model training capability as those controlled in the October 7 IFR BIS also seeks to further impair diversion channels through third countries, particularly those with AI commercial and research ties to the PRC.

In addition, credible open source reporting identified PRC companies using foreign subsidiaries to purchase chips subject to EAR controls, and accessing and operating datacenters located outside of the PRC with the ICs subject to EAR controls. Moreover, BIS is also concerned about certain additional ICs, which in turn can be used to train frontier AI models that have the most significant potential for advanced warfare applications, including unmanned intelligent combat systems, enhanced battlefield situational awareness and decision making, multidomain operations, automatic target recognition, autopiloting, missile fusion, precise guidance for hypersonic platforms, and cyber attacks. Accordingly, to address these issues, BIS is making several changes to the rule.

First, to prevent technical workarounds, BIS is adding a performance density parameter to the original control and including a new structure for the control. A performance density parameter prevents the workaround of simply purchasing a larger number of smaller datacenter AI chips which, if combined, would be equally powerful as restricted chips.

Second, to address PRC operations inside and outside of China and Macau seeking to acquire advanced ICs through transshipment and diversion, and accessing datacenters with advanced ICs, the rule expands controls to destinations in country groups D:1, D:4, and D:5 that are not also in Country Groups A:5 or A:6. Additionally, the rule also adds two new end use controls to prevent circumvention of the controls. Moreover, in section D, this rule is also soliciting comment from Infrastructure as a Service (IaaS) providers and other stakeholders on additional regulations in this area, including know your customer requirements that can be adopted to address uses that present a national security or foreign policy concern.

Third, because advanced-ICs have varying capabilities implicating national security concerns, with this rule, BIS is controlling a wider scope of advanced-ICs through adoption of a tiered approach. Thus, first, for the most powerful data-center ICs (as described in ECCN 3A090.a), which are of the greatest national security and foreign policy concern, BIS is imposing a license requirement to any destination specified in Country Groups D:1, D:4, or D:5 that are not also in Country Groups A:5 or A:6. Second, for advanced-ICs that are less powerful but could be used to train large-scale AI systems by a sufficiently well-resourced actor (as described in ECCN 3A090.b, as well as certain 3A090.a commodities) BIS is providing license exception NAC for destinations in Country Groups D:1, D:4, or D:5, but use of such license exception will require pre-notification of the export or reexport to Macau or a destination specified in Country Group D:5.

This AC/S IFR also adds a new red flag to assist semiconductor fabrication facilities' additional compliance with the advanced computing FDP rule as described under section C.10.A.

1. Revision of ECCN 3A090 and Conforming Change to 3A991.p

A. Revisions to 3A090 control parameters to ensure ICs for AI training are controlled.

In ECCN 3A090, this AC/S IFR revises the ''items'' paragraph in the List of Items Controlled section to remove paragraph a, including paragraphs a.1 through a.4, and adds in its place a simplified paragraph .a and .b. The revised 3A090.a control parameter will control ICs with one or more digital processing units having either: (1) a 'total processing performance' of 4800 or more, or (2) a 'total processing performance' of 1600 or more and a 'performance density' of 5.92 or more. The new ECCN 3A090.b will control ICs with one or more digital processing units having either: (1) a 'total processing performance' of 2400 or more and less than 4800 and a 'performance density' of 1.6 or more and less than 5.92, or (2) a 'total processing performance' of 1600 or more *and* a 'performance density' of 3.2 or more and less than 5.92. See Technical Notes to ECCN 3A090 for calculating 'total processing performance' and 'performance density.' Together, these paragraphs expand the scope of control as compared to the October 7 IFR. This action is necessary to ensure that ICs below the October 7 ECCN 3A090 parameters that were still useful for training advanced AI with military applications would be controlled.

To more precisely control the types of ICs presenting the concerns described above in section C of this rule, ICs that meet certain performance thresholds described in Note 2 are not subject to 3A090 controls. Thus, no license is required for these ICs under 3A090; however, such ICs may require a license under another ECCN.

The scope of this control is calibrated through the addition of several Notes to ECCN 3A090 and a new license exception, the former discussed below in sections C.1.B, C.1.C, and C.1.F and the latter discussed in section C.2. BIS excludes from ECCN 3A090 ICs that (1) are not designed or marketed for use in datacenters, and (2) do not have a 'total processing performance' of 4800 or more (see Note 2). As discussed in section C.2 of this rule, License Exception NAC provides a path for prior notification to BIS when exporting or reexporting eligible items to the PRC and Macau. The notification requirements do not apply for transfers (in-country) within the PRC and Macau. Eligible items for License Exception NAC are defined as those ICs under ECCN 3A090.b (including ICs that *are* designed or marketed for use in a data center) and specific ICs under 3A090.a (*not* designed or marketed for use in a data center).

B. Addition of exclusion for 'non-datacenter integrated circuits' from the expanded 3A090 control parameter.

In ECCN 3A090, this AC/S IFR adds a new Note 2 to 3A090 to specify that 3A090 does not apply to non-datacenter integrated circuits that are (a) not designed or marketed for use in datacenters; and (b) do not have a 'total processing performance' of 4800 or more. In response to this AC/S IFR, BIS seeks comments on how to refine these parameters to more granularly cover additional ICs that would not raise concerns for use in training large-scale AI systems. See section D question 6 of this rule.

The purpose of this Note 2 is to ensure that as implementation occurs in the future, the expanded ECCN 3A090.a and .b control parameters do not increasingly control certain non-datacenter ICs.

C. Revisions to technical notes for clarity.

This AC/S IFR also makes several revisions to the Technical Notes to address the various comments that BIS received noting that there are multiple ways to calculate the TOPS calculations and identifying that the criteria provided in the Technical Notes included in the October 7 IFR under ECCN 3A090 were not adequate for a consistent interpretation on how to calculate the TOPS calculation. BIS agreed that revisions were needed. This AC/S IFR revises the five technical notes for clarity. Most importantly, this AC/S IFR replaces bits x TOPS with 'Total processing performance' ('TPP') values and defines clear, objective criteria that can be used to calculate the 'TPP' value.

In ECCN 3A991, this AC/S IFR amends Technical Note for 3A991.p, paragraph 3, to conform with the changes to the Technical Notes to ECCN 3A090.

D. Expanded license requirement.

This AC/S IFR also revises the License Requirements section for the RS license requirement that applies to the entire ECCN 3A090 to expand the scope of the destination-based license requirements by removing China and Macau and adding in its place any destination specified in Country Groups D:1, D:4, or D:5 that is not also specified in Country Groups A:5 or A:6. This expanded license requirement is warranted because of the potential diversion concern for these activities of concern in or with Macau or a destination specified in Country Group D:5. However, for destinations to or within destinations not specified in Country Group D:5 (except Macau), license applications will generally be reviewed under a presumption of approval license review policy under § 742.6(b)(10) paragraph (b)(10)(ii) (License review policy for paragraph (a)(6)(iii)). See section C.4 for fuller description of the license review policies that will be applicable to these destinations referenced in this paragraph.

This AC/S IFR also adds a cross reference in the RS control in ECCN 3A090 to *see* § 742.6(a)(6)(iii) of the EAR.

E. Addition of Note 3 to 3A090 and adding Related Controls cross references from related ECCNs.

This AC/S IFR, as a conforming change for the addition of Note 3 to 3A090, adds a Related Controls reference to Note 3 to 3A090 in ECCNs 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z.

2. Addition of License Exception Notified Advanced Computing (NAC) for Consumer-Grade ICs With AI Capabilities

In § 740.8, which prior to the effective date of this rule was reserved, this AC/S IFR adds new license exception NAC. This license exception is for ICs under ECCN 3A090.b (*i.e.,* ICs designed or marketed for use in datacenters) and non-datacenter ICs under 3A090.a (*i.e.,* ICs *not* designed or marketed for use in datacenters and that *do have* a 'total processing performance' of 4800 or more). NAC is available for exports, reexports, and transfers in or within Country Groups D:1, D:4, or D:5 with different requirements applicable to Macau and destinations specified in Country Group D:5. The purpose of the notification process, which is only required for exports and reexports to Macau or destinations specified in Country Group D:5, is to provide BIS and its interagency export controls partners the opportunity to evaluate the national security risk posed by ICs that fall within this parameter.

This license exception as specified under the paragraph (a) (Eligibility requirements) will authorize export, reexport, and transfer (in-country) of any item classified in ECCNs 3A090, 4A090, 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z, except for items designed or marketed for use in a datacenter and meeting the parameters of 3A090.a. License Exception NAC authorizes exports, reexports, or transfers (in-country) to any destination specified in Country Groups D:1, D:4, or D:5, provided the applicable criteria specified under paragraphs (a) and (b) are met. For exports and reexports to Macau or destinations specified in Country Group D:5, in addition to meeting the criteria under paragraphs (a) and (b), the notification requirements under paragraph (c) of License Exception NAC must all be met. The notification requirement does not apply to exports or reexports to any destination specified in Country Groups D:1 or D:4 (other than Macau or destinations also specified in Country Group D:5) nor does it apply to transfers (in-country) to any destination.

Paragraph (a)(1) (Written purchase order) requires that any export or reexport authorized under License Exception NAC must be made pursuant to a written purchase order, except for commercial samples which are not subject to this purchase order requirement. Written purchase orders are not required for transfers (in-country). Exports, reexports, or transfers (in-country) to or within any other destination identified under Country Groups D:1, D:4, or D:5 are authorized under License Exception NAC, provided the applicable criteria under paragraphs (a) and (b) are met.

Paragraph (a)(2) (Notification to BIS) specifies that for exports or reexports to Macau or a destination specified in Country Group D:5, you must notify BIS prior to exporting or reexporting, according to the procedures set forth in paragraph (c) of License Exception NAC. Paragraph (a)(2) specifies that if you intend to engage in multiple exports or reexports after the signing of the purchase order, you need only notify BIS prior to the first export or reexport. Paragraph (a)(2) is not required for transfers (in-country) within Macau or a destination specified in Country Group D:5.

Paragraph (b) (Restrictions) apply to all exports, reexports, or transfers (in-country) authorized under License Exception NAC. Paragraph (b)(1) (Prohibited end uses and end users) specifies that License Exception NAC is not able to overcome any part 744 or 746 license requirements, except for a license required under § 744.23(a)(3) for reexports or exports to any destination other than those specified in Country Groups D:1, D:4, or D:5 (excluding any destination also specified in Country Groups A:5 or A:6) for an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5. The restriction under paragraph (b)(2) ('Military end use' or 'military end user') specifies that no exports, reexports, or transfers (in-country) may be made under License Exception NAC to or for a 'military end use' as defined in § 744.21(f) or 'military end user' as defined in defined in § 744.21(g). This 'military end use' or 'military end use' restriction applies to a broader country scope than those prohibited under §§ 744.17 and 744.21.

Paragraph (c) (Prior notification procedures) specifies the notification requirements that must be followed prior to making any export or reexport to Macau or a destination specified in Country Group D:5 under License Exception NAC. Paragraph (c)(1) (Procedures) specifies the requirement to make this notification prior to using License Exception NAC as well as what Blocks need to be completed in SNAP–R for submitting a notification request. You do not need to submit a commodity classification determination from BIS with your notification, but doing so will be helpful in limiting any concerns associated with the technical nature of the item because BIS will already be familiar with the item's performance characteristics if it has conducted a classification review.

Paragraph (c)(2) (Action by BIS) specifies that BIS intends during the 25-calendar day review period to review the notification together with the other export control agencies. Paragraph (c)(3) (Status of pending NAC notification requests) describes the process for entities to follow in BIS's System for Tracking Export License Applications (STELA) (*https://snapr.bis.doc.gov/stela*) to obtain the status of a pending NAC notification or verify the status in BIS's Simplified Network Applications Processing Redesign (SNAP–R) System. Paragraph (c)(3) also specifies that if no objection to a NAC notification is raised, STELA will, on the twenty-fifth calendar day following the date of registration, provide a confirmation of that fact and a NAC confirmation number to be submitted in AES. Paragraph (c)(3) also indicates that if the NAC notification is not approved, on the twenty-fifth calendar day following

the date of registration, STELA will provide you with confirmation if you cannot use License Exception NAC.

BIS intends to post an announcement on the BIS website once entities may submit License Exception NAC notifications with the goal that License Exception NAC requests may be submitted prior to the effective date of this rule.

This AC/S IFR, as a conforming change for the addition of License Exception NAC, adds a NAC paragraph to the List-Based License Exception section under ECCNs 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, and 5D992.z.

3. Replacing Criteria for Any Other Item on CCL That Meet or Exceed the Performance Parameters of 3A090 or 4A090 by Positively Identifying Those ECCNs and Adopting .z Paragraphs

The October 7 IFR under § 742.6(a)(6), along with other provisions in the October 7 IFR, used the criteria ''or identified elsewhere on the CCL that meet or exceed the performance parameters of ECCNs 3A090 or 4A090.'' As described above, commenters on the October 7 IFR raised significant concerns that this type of catch-all text deviated from the common structure of the CCL under supplement no. 1 to part 774 of the EAR, would be burdensome and possibly unimplementable for many exporters, reexporters, and transferors, and would lead to confusion regarding the appropriate classification and control of items on the CCL. Commenters strongly encouraged BIS to adopt a more conventional approach to implementing these changes by either adding new ECCNs to control those additional items that would otherwise meet or exceed the performance parameters of ECCNs 3A090 or 4A090, or by identifying a positive list of additional ECCNs that may warrant this additional control on the CCL and then creating separate ''items'' level paragraphs in each of these respective ECCNs.

After reviewing the concerns raised by the commenters, BIS agrees that a more conventional structure is needed for imposing this aspect of the October 7 IFR. Accordingly, BIS is identifying a positive list of the nine additional ECCNs for which BIS has determined also have performance characteristics or functions that meet or exceed the performance parameters of ECCNs 3A090 or 4A090 and is adding a new ''items'' level paragraph in the List of Items Controlled section of each of these nine ECCNs by adding .z paragraphs to each. This AC/S IFR makes several changes to the EAR to implement this important change to the October 7 IFR. For ease of reference these changes are described here under four types of changes: (1) adding .z paragraphs to nine ECCNs; (2) revising Related Controls for 3A090, 3A991, 4A090, 4A994 and the nine ECCNs to cross reference each other to assist with classification; (3) making other EAR conforming changes needed because of the addition of .z paragraphs; and (4) changing export clearance requirements to increase transparency of .z, 3A090, and 4A090 shipments.

A. Adding .z paragraphs to nine ECCNs.

This final rule revises nine ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, and 5D992 to address overlapping controls with ECCNs 3A090, 4A090, 3A991.p and 4A994.l by adding .z paragraphs to each of these nine ECCNs. These changes are intended to make it easier for exporters, reexporters, and transferors to identify these items subject to controls added in the October 7 IFR and to more easily distinguish these items from other items controlled under these same nine ECCNs. Each .z paragraph uses the same structure, but there are differences in the .z paragraphs because the overlapping controls with 3A090 and 4A090, as well as 3A991.p and 4A994.l, are not the same for each of the nine ECCNs. Despite the differences in the text used for each .z paragraph, the commonality in the paragraphs' structure should assist understanding. Some of the .z paragraphs are limited to one paragraph, but others such as ECCN 5A002 have several paragraphs under the .z paragraph. BIS is adopting the .z structure because no ECCN currently has a .z ''items'' level paragraph. Similar to the structure used with the .x and .y paragraphs for the ''600 series,'' 9x515, and 0x5zz ECCNs, using a common ''items'' paragraph designation will make it easier for exporters, reexporters, and transferors to identify these items, as well as for the U.S. Government to identify these items under these nine ECCNs.

For each ECCN this rule revises to add a .z paragraph, this rule reserves the items level paragraph from where the items paragraph ended prior to this AC/S IFR becoming effective up through paragraph .y. For example under ECCN 5A002, this rule revises 5A002 to reserve paragraphs .f through .y. This rule does the same in each of the other eight ECCNs that are being revised to add the .z paragraphs, but depending on how many items paragraphs each ECCN had before the effective date of this AC/S IFR, different paragraphs are reserved.

BIS includes as an illustrative example some of the .z paragraphs from ECCN 5A002 that this AC/S IFR adds. The introductory text of the 5A002.z paragraph identifies ''Other commodities, as follows'' and then includes additional control parameters to identify these .z commodities. ECCN 5A002, because of the complexity of the ECCN and the overlapping controls with 3A090 and 4A090, has several .z subparagraphs that are tied to the other ''items'' paragraphs in 5A002. For example, 5A002.z.1 controls commodities that are described in 5A002.a and that also meet or exceed the performance parameters in 3A090 or 4A090. Similarly, 5A002.z.2 controls commodities that are described in 5A002.b and that also meet or exceed the performance parameters in 3A090 or 4A090. Some of the other relevant ECCNs have a simpler and shorter structure and may be limited to a single .z paragraph. However, regardless of how many .z paragraphs are added, each .z paragraph functions the same way because it references an item that is described elsewhere in the same ECCN that also meets or exceeds the performance parameters in 3A090, 4A090, 3A991.p, or 4A994.l, as applicable and specified in the respective .z paragraph. By classifying these items in their own .z paragraph, it will be easier for exporters, reexporters, and transferors to identify these items and the additional controls and other restrictions that are applicable to them.

In ECCN 3A001, this AC/S IFR reserves paragraphs j. through y. and adds paragraphs z.1 through .4 to the ''items'' paragraph in the List of Items Controlled section and makes the following conforming changes by adding certain 3A001.z items to the NS1, RS1, MT1 and NP1 Controls paragraphs and adding a RS control that applies to items controlled by 3A001.z for destinations specified in Country Groups D:1, D:4, or D:5. This AC/S IFR adds 3A001.z to the exclusion on using License Exception LVS.

In ECCN 4A003, this AC/S IFR reserves paragraphs h. through y. and adds paragraphs .z.1 through .z.4 in the List of Items Controlled section and makes a corresponding change to the Reason for Control section by adding a RS control for items controlled by 4A003.z for destinations specified in Country Groups D:1, D:4, or D:5. This AC/S IFR adds 4A003.z to the exclusion on using License Exception LVS. This AC/S IFR also adds a new Note to List Based License Exception in ECCN 4A003 to specify that the related equipment specified under ECCN 4A003.g, z.2, or z.4 are eligible for

License Exception GBS if three conditions are met. The related equipment must be exported, reexported, or transferred (in-country) as part of a computer system, the computer system must either be designated as NLR or eligible for License Exception APP, and the related equipment must be eligible for License Exception APP.

In ECCN 4A004, this AC/S IFR reserves paragraphs d. through y. and adds paragraph .z in the List of Items Controlled section and makes a corresponding change to the Reasons for Control section by adding a RS control that applies to items controlled by 4A004.z (1) for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6 and (2) to or with any destination not specified in Country Groups D:1, D:4, or D:5 when the export, reexport or transfer (in-country) includes an ultimate consignee or end user headquartered in a destination in Country Groups D:1, D:4, or D:5 that is not also specified in Country Groups A:5 or A:6. This AC/S IFR adds 4A004.z to the exclusion on using License Exception LVS.

In ECCN 4A005, this AC/S IFR revises the heading to add the parenthetical phrase ''(see List of Items Controlled).'' This AC/S IFR revises the phrase that referenced ''[T]he list of items controlled is contained in the ECCN heading'' in the ''Items'' paragraph in the List of Items Controlled section to add the phrase ''except for the commodities controlled under 4A005.z.'' This rule reserves paragraphs a. through .y, adds paragraph .z, and makes a corresponding change to the Reasons for Control section to add a RS control that applies to items controlled by 4A005.z for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6. This AC/S IFR also adds 4A005.z to the exclusion on using License Exception ACE.

BIS notes that although the general restriction on the use of license exceptions under § 740.2(a)(9)(ii) and the terms and conditions of certain list-based license exceptions, such as LVS or GBS, or the terms of License Exception STA, would preclude the use of these EAR license exceptions for destinations specified in Country Groups D:1, D:4, or D:5, that are not also specified in Country Groups A:5 or A:6, that this AC/S IFR as an additional safeguard still adds exclusions for the new .z paragraphs for these ECCNs as an additional reminder to exporters, reexporters, and transferors that these license exceptions are not available for .z items for these destinations.

In ECCN 5A002, this AC/S IFR reserves paragraphs f. through y. and adds paragraphs .z.1 through .5 in the List of Items Controlled section and makes the following conforming changes by adding a RS control that applies to items controlled by 5A002.z for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6. This AC/S IFR also adds 5A002.z to the exclusion on using License Exceptions LVS and ENC.

In ECCN 5A992, this AC/S IFR reserves paragraphs d. through y. and adds paragraphs .z.1 and .2 in the List of Items Controlled section and makes a corresponding change to the Reasons for Control section by revising the RS control that applies for 5A992.z items destined to or within destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6.

In ECCN 5A004, this AC/S IFR reserves paragraphs c. through y. and adds paragraphs .z.1 and .2 in the List of Items Controlled section and makes the following conforming change by adding a RS control that applies to items controlled by 5A004.z for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6. This AC/S IFR also adds 5A004.z to the exclusion on using License Exceptions LVS and ENC.

In ECCN 5D002, this AC/S IFR reserves paragraphs e. through y. and adds paragraphs .z.1 through .9 in the List of Items Controlled section and makes the following conforming change by adding a RS control that applies to items controlled by 5D002.z for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6. This AC/S IFR also adds 5D002.z to the exclusion on using License Exception ENC.

In ECCN 5D992, this AC/S IFR reserves paragraphs d. through y. and adds paragraph .z in the List of Items Controlled section and makes a corresponding change to the Reasons for Control section by revising the RS control that applies for destinations specified in Country Groups D:1, D:4, or D:5 that are not also specified in Country Groups A:5 or A:6.

B. Revising Related Controls for 3A090, 4A090, 5E001, and the Nine ECCNs to cross reference each other to assist with classification.

BIS includes Related Controls paragraphs in the List of Items Controlled section of ECCNs to alert persons classifying items of related controls that may be applicable. This rule revises the Related Controls paragraphs in ECCNs 3A090 and 4A090 to add references to the nine ECCNs that this final rule adds .z paragraphs to, as applicable. Because the cross over that is being addressed is not identical for each of these nine ECCNs with .z paragraphs added, the revisions to the Related Controls paragraphs are not identical in all cases.

In ECCN 3A001, this AC/S IFR adds a reference to see also ECCN 3A090.

In ECCN 3A090, this AC/S IFR adds a reference to see also 3A001.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, and 5D992.z.

In ECCN 3A991, this AC/S IFR adds a reference to see also ECCNs 5A002.z, 5A004.z, and 5A992.z.

In ECCN 4A003, this AC/S IFR adds a reference to see also ECCN 4A090.

In ECCN 4A004, this AC/S IFR adds a reference to see also ECCN 4A090.

In ECCN 4A005, this AC/S IFR adds a reference to see also ECCN 4A090.

In ECCN 4A090, this AC/S IFR adds a reference to see also ECCNs 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, and 5D992.z.

In ECCN 4A994, this AC/S IFR adds a reference to see also ECCNs 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, and 5A992.z.

In ECCN 5A002, this AC/S IFR adds a reference to see also ECCNs 3A090 and 4A090.

In ECCN 5A004, this AC/S IFR adds a reference to see also ECCNs 3A090 and 4A090.

In ECCN 5A992, this AC/S IFR adds a reference to see also ECCNs 3A090 and 4A090.

In ECCN 5D002, this AC/S IFR adds a reference to see also ECCNs 3D001.z and 4D001.z.

In ECCN 5D992, this AC/S IFR adds a reference to see also ECCNs 3D001.z and 4D001.z.

In ECCN 5E001, this AC/S IFR adds a reference to see also ECCN 3A001.z.

C. Other EAR conforming changes needed because of addition of .z paragraphs.

This AC/S IFR makes various changes to other ECCNs and other parts of the EAR to make conforming changes where needed as a result of the addition of the .z items paragraphs to the nine ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, and 5D992.

These changes are made to ensure that certain provisions that currently apply for other items controlled under these nine ECCNs are not narrowed or expanded as a result of the addition of the .z paragraphs. In other cases, specific ''items'' paragraphs from these

nine ECCNs are identified in other provisions where in certain cases, it was needed to also add in references to ensure the same provisions will apply to the .z paragraphs. Because some of the nine ECCNs include ECCNs, such as 5A002 and 5D002, which are referenced in various other provisions of the EAR, this AC/S IFR needed to make various conforming changes to these other ECCNs and parts of the EAR. Although this appears to be extensive revision, the intent in most cases is to ensure that the scope of the controls prior to this AC/S IFR generally does not change. The changes are described below in the order they appear in the EAR.

Conforming Changes in Part 734

In § 734.4(b)(2), this AC/S IFR removes ECCNs 5A992.c and 5D992.c and adds in their place ECCNs 5A992 and 5D992. These requirements are intended to apply to the entire ECCNs, so these changes are needed to account for the addition of .z to 5A992 and 5D992.

In § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*), this AC/S IFR revises these two paragraphs to remove the phrase ''elsewhere on the CCL and meets the performance parameters in 3A090 or 4A090'' and adds a more specific reference to ''meeting the performance parameters in ECCNs 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z.'' By adding this more specific reference tied to the new .z paragraphs, this AC/S IFR will make it easier for foreign manufacturers to comply with this aspect of the Advanced Computing Foreign Direct Product (FDP) rule and to more easily apply the *de minimis* provisions.

Conforming Changes in Part 740

In § 740.2 Restrictions on all License Exceptions, this AC/S IFR revises the general restriction on the use of license exceptions under paragraph (a)(9)(ii), which will now be paragraph (a)(9)(ii)(B) because of the revisions made in this SME IFR, to remove the phrase ''elsewhere on the CCL which meets or exceeds the performance parameters in ECCNs 3A090 or 4A090'' and adds in its place the more specific reference to ''specified in ECCNs 3A001.z; 3D001 (for ''software'' for commodities controlled by 3A001.z, 3A090), 3E001 (for ''technology'' for commodities controlled by 3A001.z); 4A003.z; 4A004.z; 4A005.z; 4D001 (for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 4E001 (for ''technology'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for ''technology'' for commodities controlled by 5A002.z or 5A004.z); ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities); 5E992 (for ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z).'' By adding this more specific reference tied to the new .z paragraphs, this AC/S IFR will make it easier for exporters, reexporters, and transferors to know when this general restriction will apply on the use of license exceptions. In the introductory text of paragraph (a)(9)(ii), this AC/S IFR adds a reference to new License Exception NAC by adding the phrase ''NAC, under the provisions of § 740.8.''

In addition to amending § 740.2(a)(9) to prohibit the use of license exceptions for certain ECCNs, including those with a .z paragraph, BIS also notes restrictions for certain license exceptions as a reminder for exporters. In § 740.7 Computers (APP), this AC/S IFR adds a reference to 4A003.z.2 or z.4 after the reference to 4A003.g in paragraph (b)(1) to remind exporters that this restriction on the use of License Exception APP will also apply when a commodity that is described in 4A003.g is controlled under 4A003.z.2 or .z.4.

In § 740.16 Additional permissive reexports (APR), this AC/S IFR revises paragraphs (a)(2) and (b)(2)(ii) to add a reference to 3A001.z to ensure that the restrictions under 3A001.b.2 or b.3 will continue to apply when a commodity described under one of those two ''items'' paragraphs is controlled under 3A001.z.

In § 740.17 Encryption Commodities, Software and Technology (ENC), this AC/S IFR makes several conforming changes to ensure the intended scope of this license exception is not changed as a result of the addition of the .z ''items'' paragraphs:

Under the fifth sentence of the introductory text to § 740.17, this AC/S IFR removes the reference to 5A992.c and 5D992.c and adds in its place a reference to 5A992 and 5D992.

Under paragraph (b)(1) to § 740.17, this AC/S IFR adds a reference after 5A002.a to 5A002.z.1 and removes the reference to 5A992.c and 5D992.c and adds in its place a reference to 5A992 and 5D992. BIS could have added a reference to 5D992.z, but because ECCN 5D992 only includes ''items'' paragraphs .c and .z, it was simpler to add a reference to 5D992.

Under paragraph (b)(2)(i)(D) to § 740.17, this AC/S IFR after 5A002.c adds a reference to 5A002.z.3 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Under the Note to paragraph (b)(2) to § 740.17, this AC/S IFR adds after ECCN 5A002.b a reference to 5A002.z.2 and after 5D002.b a reference to 5D002.z.5 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Under (b)(3) introductory text to § 740.17, this AC/S IFR removes 5A992.c and 5D992.c and adds in their place references to 5A992 and 5D992. BIS could have added a reference to 5D992.z, but because ECCN 5D992 only includes ''items'' paragraphs .c and .z, it was simpler to add a reference to 5D992.

Under (b)(3)(i) introductory text to § 740.17, this AC/S IFR after 5A002.a adds a reference to 5A002.z.1 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Under paragraph (b)(3)(iii)(B) to § 740.17, this AC/S IFR after 5D002.a.3.b adds a reference to 5D002.z.4, and after 5D002.c.3.b adds a reference to 5D002.z.9 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Under paragraph (b)(3)(iv) to § 740.17, this AC/S IFR after 5A002.b adds a reference to 5A002.z.2, and after 5D002.b adds a reference to 5D002.z.5 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Under paragraph (e)(3) second sentence to § 740.17, this AC/S IFR removes the reference to 5A992.c and 5D992.c and adds in its place a reference to 5A992 and 5D992. BIS could have added a reference to 5D992.z, but because ECCN 5D992 only includes ''items'' paragraphs .c and .z, it was simpler to add a reference to 5D992.

Under paragraph (f)(1) to § 740.17, this AC/S IFR adds after 5A004.a a reference to 5A004.z.1 and z.2, after 5D002.a.3.a a reference to 5D002.z.3 and z.8 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

Conforming Changes in Parts 742, 746, and 748

In § 742.6 Regional stability, this AC/S IFR revises paragraph (a)(6)(i), to remove the phrases beginning with ''5A992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090)'' and ''5D992 (that meet or exceed the performance parameters of ECCNs 3A090 or 4A090).'' Also in paragraph (a)(6)(iii), this AC/S IFR removes the phrase ''elsewhere on the CCL that meet or exceed the performance parameters of ECCNs

3A090 or 4A090'' and in its place references the nine .z ECCNs ''3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z.'' As noted and requested by several commenters, having a positive listing of relevant ECCNs will significantly ease the burden on exporters, reexporters, and transferors and the controls will be easier to implement.

In § 746.8 Sanctions against Russia and Belarus, this AC/S IFR adds .c after 5A992 and 5D992. This AC/S IFR makes this change to ensure that 5A992.z and 5D992.z commodities and software will not be within the scope of this exclusion.

In § 742.15 (Encryption items), this AC/S IFR revises the third sentence of paragraph (a)(1) to remove the .c after 5A992.c and 5D992.c to ensure the scope of requirement is not changed by the addition of 5A992.z and 5D992.z.

In § 746.10 'Luxury Goods' Sanctions Against Russia and Belarus and Russian and Belarusian Oligarchs and Malign Actors, this AC/S IFR adds .c after 5A992 and 5D992. This AC/S IFR makes this change to ensure that 5A992.z and 5D992.z commodities and software will not be within the scope of this exclusion.

In supplement no. 7 to part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible For Export, Reexport And Transfer, And Eligible Destinations, this AC/S IFR revises the VEU entry for ''Advanced Micro Devices China, Inc.'' in China to remove the reference to 4A003 and add in its place the more specific reference to 4A003.b through .g to ensure that the currently approved scope of this VEU entry does not change because of the addition of 4A003.z. In addition, this AC/S IFR revises the entry for ''Shanghai Huahong Grace Semiconductor Manufacturing Corporation'' in China to remove the reference to 5A002 and add in its place the more specific reference to 5A002.a through .e; remove the reference to 5A004 and add in its place a more specific reference to 5A004.a through .b; and remove 5A992 and adds in its place a reference to 5A992.c. Also in supplement no. 7 to part 748, this AC/S IFR revises the heading of the supplement to add the parenthetical phrase ''(in-country)'' after the term ''transfer'' for clarity on the scope of the VEU authorizations under this supplement and for consistency with other EAR the provisions, such as the definition of ''transfer (in-country).''

Conforming Changes to §§ 770.2 and 772.1

In § 770.2 Item interpretations, this AC/S IFR after 4A003.g adds a reference to 4A003.z.2 and .z.4 in paragraph (l)(2) to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In § 772.1 Definitions of terms as used in the Export Administration Regulations (EAR), this AC/S IFR revises Note 1 to the term ''specially designed,'' to add the parenthetical phrase ''(except for .z)'' after ECCNs 5A992 and 5D992 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In ECCNs 3D001, 3E001, 4D001, 4E001, 5D002 5E002, and 5E992, this AC/S IFR revises the License Requirement section of each of these nine ECCNs to add related ''software'' and ''technology'' controls for the new .z items added to the nine ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, and 5D992 to impose the same license requirements on the related ''software'' and ''technology'' as applies to the .z commodities this AC/S IFR adds.

Conforming Changes to the CCL

In ECCN 3D001, this AC/S IFR revises the TSR paragraph in the List Based License Exceptions section to add after ECCN 3A001.b.8 a reference to 3A001.z to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In ECCN 3E001, this AC/S IFR revises the TSR paragraph in the List Based License Exceptions section to add after ECCNs 3A001.b.8, 3A001.e.4, 3A001.b.2, and 3A001.b.3 references to 3A001.z after each of these items paragraphs to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph. Also in ECCN 3E001 under the Special Conditions for STA section, this AC/S IFR adds after ECCN 3A001.b.2 and .b.3 a reference to 3A001.z to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph. Also in Note 2 in the ''items'' paragraph in the List of Items Controlled section, this rule adds after 3A001.a.3 and .14 a reference to 3A001.z to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In Note 3 to Category 4—Computers, this AC/S IFR after 5A002.a adds a reference to 5A002.z.1 and z.6, and after 5A004.b adds a reference to 5A004.z; after 5D002.c.3 adds references to 5D002.z.6, 5D002.z.8, and z.9. These changes are made to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In the Technical Note paragraph 2 in the TECHNICAL NOTE ON ''ADJUSTED PEAK PERFORMANCE'' (''APP'') at the end Category 4—Computers, this AC/S IFR after 4A003.c adds a reference to 4A003.z.1 and z.3 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In Note 3 to Category 5—Telecommunications and ''Information Security'' Part 1—Telecommunications, this AC/S IFR after 5A002.a adds a reference to 5A002.z.1 and z.6; after 5A004.b adds a reference to 5A004.z; after 5D002.c.1 adds a reference to 5D002.z.6; and after 5D002.c.3 adds a reference to 5D002.z.8 and z.9 to ensure the intended scope of this note is not changed as a result of the addition of the .z ''items'' paragraph.

In Note 3 (Cryptography Note) to Category 5—Telecommunications and ''Information Security'' Part 2—''Information Security,'' to ensure the intended scope of this note is not changed as a result of the addition of the .z ''items'' paragraph, this AC/S IFR after 5D002.a.1 adds 5D002.z.1; after 5D002.b adds 5D002.z.5; and after 5D002.c.1 adds 5D002.z.6 . In addition, under the N.B. to Note 3 (Cryptography Note), this AC/S IFR removes 5A992.c and 5D992.c and adds in their place 5A992 and 5D992. BIS could have added a reference to 5A992.z and 5D992.z, but because ECCNs 5A992 and 5D992 only include ''items'' paragraphs .c and .z, it was simpler to add references to 5A992 and 5D992.

In ECCN 5B002 under ''items'' paragraph .b in the List of Items Controlled section, this AC/S IFR after 5D002.a adds a reference to 5D002.z.1 through z.4 and after 5D002.c adds a reference to 5D002.z.6 through z.9 to ensure the intended scope of this provision is not changed as a result of the addition of the .z ''items'' paragraph.

In ECCN 5E002, this AC/S IFR under ''items'' paragraph a in the List of Items Controlled section after 5D002.a adds a reference to 5D002.z.1 through .z.3, and after 5D002.c adds a reference to 5D002.z.6 through .z.8. Also in the Note to 5E002.a, this AC/S IFR after 5D002.a.3.b adds a reference to 5D002.z.4; and after 5D002.c.3.b adds a reference to 5D002.z.9. Lastly under 'items'' paragraph b in the List of Items Controlled section, this AC/S IFR after 5A002.b adds a reference to 5A002.z.2. All of these changes are made to ECCN 5E002 to ensure the intended scope of

these provisions is not changed as a result of the addition of the .z ''items'' paragraph.

In ECCN 5E992, this AC/S IFR revises ''items'' paragraph b in the List of Items Controlled section to remove 5D992.c and add in its place 5D992. BIS could have added a reference to 5D992.z, but because ECCN 5D992 only includes an ''items'' paragraph .c and .z, it was simpler to add a reference to 5D992.

In ECCN 9A004, this AC/S IFR under ''items'' paragraph d in the List of Items Controlled section, after 3A001.b.1.a.4 adds a reference to 3A001.z (if also described in 3A001.b.1.a.4), after 5A002.c adds a reference to 5A002.z.3, and after 5A002.e adds a reference to 5A002.z.5 and z.10 to ensure the intended scope of these provisions is not changed as a result of the addition of the .z ''items'' paragraph.

In ECCN 9A515 under Note 2 to 9A515.d and .e, this AC/S IFR after 3A001.a adds a reference to 3A001.z to ensure the intended scope of this note is not changed as a result of the addition of the .z ''items'' paragraph. In addition, under ''items'' paragraph x.4 in the List of Items Controlled section, this rule after 3A001.e.4 adds a reference to 3A001.z, after 3A001.b.4 adds a reference to 3A001.z; and under ''items'' paragraph x.6 after 3A001.b.8 adds a reference to 3A001.z. All of these changes to ECCN 9A515 are made to ensure the intended scope of these provisions is not changed as a result of the addition of the .z ''items'' paragraph.

Conforming Changes to Supp. No. 6 to Part 774

In supplement no. 6 to part 774—Sensitive List, this AC/S IFR revises paragraphs: (3)(i) to add after 3A001.b.2 the parenthetical phrase ''(including those described under 3A001.b.2 that are controlled by 3A001.z)''; (3)(ii) to add after 3A001.b.3 the parenthetical phrase ''(including those described under 3A001.b.3 that are controlled by 3A001.z);'' (3)(iv) to add after 3A001.b.3 the phrase ''equipment described under 3A001.b.2 or 3A001.b.3 that are controlled under 3A001.z'' and after 3A002.g.1 to add the phrase ''and equipment described under 3A002.g.2 that are controlled under 3A002.z;'' and lastly under (3)(v) after 3A001.b.3, adds the phrase ''equipment described under 3A001.b.2 or 3A001.b.3 that are controlled under 3A001.z'' and after 3A002.g.1 adds the phrase ''and equipment described under 3A002.g.2 that are controlled under 3A002.z.'' All of these changes to the Sensitive List are made to ensure the intended scope of these provisions is not changed as a result of the addition of the .z ''items'' paragraph.

D. Export clearance changes to increase transparency of .z, 3A090, and 4A090 shipments.

i. *Identification of .z items in AES.* The identification of items under .z paragraphs will assist exporters, reexporters, and transferors by having a distinct classification of these items under these nine ECCNs, which will assist companies in reducing their compliance burdens and keeping better track of these items. For all shipments to China, regardless of dollar value, an Electronic Export Information (EEI) filing is required in AES for any items classified under an ECCN on the CCL pursuant to the requirement under § 758.1(b)(10), which includes the nine ECCNs that this rule adds .z paragraphs to, unless authorized under License Exception GOV under § 740.11. The mandatory EEI filing requirement in AES is important for transparency into which CCL items are being shipped to China. However, classification information filed in AES is at the ECCN level and does not include the ''items'' level classification. One exception to this practice is in the case of end-item firearms for exporters who wish to use the EEI filing in AES as the method for submitting conventional arms reporting to BIS instead of submitting separate reports to BIS. They do so by entering the items level classification as the first text to appear in the Commodity description block in the EEI filing in AES.

The benefit for exporters would be undermined if they are not allowed to identify in the EEI filing in AES the .z items level classification because their shipments to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, could potentially be stopped if someone from the U.S. Government had questions as to whether, for example, the item was classified under ECCN 5A002.a or under 5A002.z. The U.S. Government also has an interest in being able to easily identify the .z items in the EEI filing data in AES. The solution to this problem, to benefit both exporters and the U.S. Government, BIS applies the successful model that has been used for identifying end-item firearms in the EEI data in AES by adopting a similar type of requirement for these .z paragraphs for EEI filings in AES. In § 758.1 (The Electronic Export Information (EEI) Filing to the Automated Export System (AES)), this rule adds a new paragraph (g)(5) (Exports of .z items that meet or exceed the performance parameters of ECCN 3A090 or 4A090). New paragraph (g)(5) imposes a requirement for identifying .z items by ''items'' level classification in the EEI filing in AES. New paragraph (g)(5) specifies that for any export of .z items controlled under ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, or 5D992 in addition to any other required data for the associated EEI filing, the EEI filer must include the items paragraph classification (*i.e.,* .z), when applicable, for ECCNs 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z, 5D002.z, or 5D992.z. as the first text to appear in the Commodity description block in the EEI filing in AES.

ii. *Identification of 3A090, 4A090, and .z commodities on the commercial invoice.* In § 758.6, this AC/S IFR revises paragraph (a)(2) to expand the list of ECCNs that an exporter must incorporate as an integral part of the commercial invoice. Prior to this final rule becoming effective, this requirement was limited to ECCN(s) for any 9x515 or ''600 series'' ''items'' being shipped (*i.e.,* exported in tangible form). This AC/S IFR adds 3A090 and 4A090, and the seven commodity .z ECCNs 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, and 5A992.z, to the requirement. This AC/S IFR does not add ECCNs 5D002.z and 5D992.z to § 758.6 because these exports would typically be done in an intangible format. However, even when EEI is not required to be filed in AES for an intangible export, BIS still encourages exporters, as a good compliance practice, to identify the .z classification for ECCN 5D002.z and 5D992.z on the commercial invoice when applicable. For the nine ECCNs with a .z paragraph, the requirement to include the classification only applies to commodities classified under the .z paragraphs. If the commodity is classified under any other items paragraph in one of those nine .z ECCNs, then the requirement under § 758.6(a)(2) is not applicable. This AC/S IFR also specifies that the requirement for identifying ECCN 3A090 includes identifying the commodity as either 3A090.a or .b.

BIS is adding this additional export clearance requirement to increase the transparency of these items for entities receiving these items overseas. In particular, with the foreign direct product rules from the October 7 IFR also tied to these ECCNs, it will assist foreign manufacturers and other parties to be able to more easily identify when they receive a 3A090, 4A090, or a 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z ECCN item. BIS is aware that companies outside the United States have

requested in the past on several occasions that BIS broaden the requirement under § 758.6(a)(2) to require additional ECCNs to be included on the commercial invoice to assist them and reduce their burden. There were also a significant number of comments in response to the October 7 IFR that expressed concern that the burdens being imposed in particular on reexporters may lead to a designing out of U.S.-origin content, so broadening this requirement for U.S. exporters to assist foreign manufacturers is a tangible way that BIS can reduce the burden on reexporters, while at the same time helping to improve the effectiveness of the October 7 IFR by ensuring greater transparency for these items. BIS does not anticipate any change in the burden for exporters as a result of this expanded requirement.

4. Expansion of RS License Requirements, and Adoption of Additional Presumption of Approval License Review Policy With Certain Exclusions That Will Be Presumption of Denial

A. Expansion of RS license requirement from China and Macau to include Country Groups D:1, D:4, and D:5.

In § 742.6 Regional stability, the AC/S IFR revises paragraph (a)(6) (RS requirement that applies to advanced computing and semiconductor manufacturing items) to reflect the expanded scope of this paragraph for certain items. BIS is revising paragraph (a)(6)(i) to remove references to 3A090 and 4A090 and the associated software and technology, adding .z items created by this AC/S IFR, and imposing a license requirement for these items under new paragraph (a)(6)(iii) (Exports, reexports, transfers (in-country) to or within destinations specified in Country Groups D:1, D:4, and D:5, excluding destinations also specified in Country Groups A:5 or A:6). This AC/S IFR adds these items under a separate paragraph (a)(6)(iii) because of the expanded country scope of destinations in Country Groups D:1, D:4, and D:5 that are not also specified in Country Groups A:5 or A:6, which will apply to these items. The broader country scope license requirement for these items identified under paragraph (a)(6)(iii) is warranted to address diversion concerns from these destinations specified in Country Groups D:1, D:4, and D:5 (excluding destinations also specified in Country Groups A:5 or A:6) to China and Macau. BIS notes that these additional countries are members of Country Group D:1, D:4, or D:5 because of concerns related to national security or missile technology proliferation, or as countries subject to a U.S. arms embargo, respectively. A fuller description of the national security concerns that led to these changes can be found in section C of this rule, including a description of the different license review policies that apply to some of these additional Country Group D:1, D:4, or D:5 destinations compared to China and Macau. See section C.4 for the description of the license review policies.

Also, in § 742.6(a)(6), the AC/S IFR removes § 742.6(a)(6)(ii) (Deemed exports) and redesignates that paragraph as (a)(6)(iv), as described further below under Section C.3.B. In addition, this AC/S IFR removes the former license requirement under paragraph (a)(6)(i) that applied to exports from abroad originating in either China or Macau, and adds that under paragraph (a)(6)(ii), including adding references to the .z items this AC/S IFR adds to the EAR, consistent with § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR. This AC/S IFR redesignates this text also under paragraph (a)(6)(ii) because BIS is not expanding the country scope of the FDP rules under § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR. This AC/S IFR also removes paragraph (a)(6)(ii) (which this SME IFR redesignated as (a)(6)(iii) and this AC/S IFR redesignates as (a)(6)(iv)), as described further below under section C.3.B). Also, in § 742.6, this rule redesignates the introductory text of paragraph (b)(10) (Advanced computing and semiconductor manufacturing items) as new paragraph (b)(10)(i) (License review policy for paragraphs (a)(6)(i) and (ii)) to specify the license review policy that applies to those two new paragraphs. This AC/S IFR specified that such license applications will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR rule.

This AC/S IFR also adds a new paragraph (b)(10)(ii) (License review policy for paragraph (a)(6)(iii)) to specify license applications for items specified in paragraph (a)(6)(iii) to or within destinations not specified in Country Group D:5 (except Macau) will be reviewed on a presumption of approval basis, unless the export, reexport, or transfer (in-country) is to an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, in which case license applications will be reviewed under a presumption of denial. This AC/S IFR also specifies that license applications for items to or within Macau or destinations specified in Country Group D:5 for items specified in paragraph (a)(6)(iii) will be reviewed under a presumption of denial.

In conformity to the changes described above, this AC/S IFR also revises ECCNs 3A001, 3D001, 3E001, 4A003, 4A004, 4A005, 5A002, 5A004, and 5D002 to add a RS license requirement and a reference to destinations specified in Country Groups D:1, D:4, or D:5 (excluding destinations specified in Country Groups A:5 or A:6). Similarly, the RS license requirement in ECCNs 3A090, 4A090, 5A992, and 5D992 is revised to remove the reference to ''China and Macau'' and to add in its place a reference to destinations specified in Country Groups D:1, D:4, or D:5 (excluding destinations specified in Country Groups A:5 or A:6).

B. Exclusion of deemed exports and deemed reexports.

This AC/S IFR removes § 742.6(a)(6)(iii) that, prior to the effective date of this SME IFR, specified that deemed exports and deemed reexports were excluded from the license requirements under paragraph (a)(6) and redesignates this paragraph as paragraph (a)(6)(iv). See section D question 4 for specific public comments BIS is seeking on the application of deemed exports and deemed reexports.

5. Clarifications for ''U.S. Person'' End Use Control

A. Clarification of the scope of ''U.S. persons'' activities controlled under § 744.6(c)(2) with the addition of new paragraph (c)(3).

This AC/S IFR revises paragraphs (c)(2)(i) and (ii) to broaden the country scope of those controls from Macau and China to apply to Macau and destinations specified in Country Group D:5 when you know the item will be used in the ''development'' or ''production'' of ICs at a facility of an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

This AC/S IFR also adds a paragraph (c)(3) (*Scope of activities of ''U.S. persons'' that require a license under § 744.6(c)(2) of the EAR)* to clarify the scope of activities that are caught under § 744.6(c)(2)(i) through (iii). This clarification, partially codifying previously issued guidance from BIS through Frequently Asked Questions for the October 7 IFR, addresses questions received regarding the types of activities of ''U.S. persons'' that are intended to be

caught and are subject to the paragraph (c)(2)(i) through (iii) license requirements. This AC/IFR adds paragraph (c)(3)(i) to specify that the ''U.S. persons'' controls in § 744.6(c)(2) apply to persons who meet the criteria under paragraph (c)(3)(i)(A), (B), or (C).

The persons subject to the license requirements under paragraph (c)(3)(i)(A) are ''U.S. persons'' that authorize the shipment, transmittal, or transfer (in-country) of items not subject to the EAR, under paragraph (c)(3)(i)(B) are ''U.S. persons'' that conduct the delivery, by shipment, transmittal, or transfer in-country, of items not subject to the EAR, and under paragraph (c)(3)(i)(C) are ''U.S. person'' that service, including maintaining, repairing, overhauling, or refurbishing items not subject to the EAR.

This AC/S IFR also adds paragraph (c)(3)(ii) (*Due diligence*) to illustrate the type of due diligence that should be undertaken when reviewing a transaction for purposes of § 744.6(c)(2)(i) through (iii). ''U.S. persons'' should conduct due diligence to determine whether the end use for the item not subject to the EAR involves the ''development'' or ''production'' of ''advanced-node integrated circuits versus other legacy ICs.'' Paragraph (c)(3)(ii) provides examples of what appropriate due diligence may include, including guidance for how to resolve potential red flags.

Lastly, this AC/S IFR adds a new paragraph (d)(1) (Exclusion of certain administrative and clerical activities and information otherwise excluded), which includes adding new paragraph (d)(1)(i) (*Exclusion of Certain administrative and clerical activities*) to specify the types of ''U.S. person'' activities that are excluded from the controls in § 744.6. This AC/S IFR also adds new paragraph (d)(1)(ii) that clarifies that the scope of § 744.6(c)(2) does not include information or software that would otherwise be excluded from the EAR based on the exclusion criteria under part 734, *e.g.,* under § 734.7 Published and § 734.8 ''Technology'' or ''software'' that arises during, or results from, fundamental research. This AC/S IFR also adds paragraph (d)(1)(iii) to add an exclusion of law enforcement and intelligence operations of the U.S. Government to specify the ''U.S. persons'' criteria in § 744.6(c)(2)(i)–(iii) do not extend to ''U.S. persons'' conducting law enforcement and intelligence operations of the U.S. Government.

B. Addition of guidance for submitting license applications for ''U.S. persons'' activities.

In supplement no. 2 to part 748—Unique Application and Submission Requirements, this rule adds a new paragraph (s) (*''U.S. person'' support activities that require a license under § 744.6*), to provide guidance on how to apply for a license application for ''U.S. person'' activities that require a license application under § 744.6. The guidance, codifying and expanding upon previously issued BIS Frequently Asked Questions on this issue, is under new paragraph (s). The provision specifies that applicants should use the reexport designation on the SNAP–R form and in the ''Additional Information'' section of the license application, they should note that a license is required for the transaction under § 744.6 of the EAR. The guidance also specifies that in the special purpose field, the applicant should describe the specific activity the ''U.S. person'' is engaged in that requires a license. In addition, the guidance specifies the applicant should provide the ECCN of the technology or item or, if unknown, use EAR99 (regardless of whether the items are subject to the EAR), as well as a complete explanation of the activity in supplemental documentation.

In § 748.8 (Unique application and submission requirements), this rule makes a conforming change to add a new paragraph (d) (U.S. person support activities that require a license under § 744.6). This rule also, as additional conforming changes with the existing supplement no. 2 to part 748, adds paragraphs (s) (Exports of firearms and certain shotguns temporarily in the United States); (t) (''600 Series Major Defense Equipment''); and (z) (Semiautomatic firearms controlled under ECCN 0A501.a). Paragraphs (s), (t), and (z) were included in supplement no. 2 to part 748, but were inadvertently omitted from the text in § 748.8, so this rule corrects that oversight.

6. Expansion of § 744.23 To Add Two Additional End-Use license Requirements

A. Addition of end-use control for Macau and D:5 headquartered (headquartered in or whose ultimate parent company is headquartered in Macau or Country Group D:5), companies when located outside of D:1, D:4, or D:5.

In § 744.23 ''Supercomputer'' and semiconductor manufacturing end use, this rule expands the scope of the end-use controls under this section by adding two new end-use controls. First, this AC/S IFR adds under paragraph (a)(3)(i) a new advanced computing end-use control which will apply to any item subject to the EAR and specified in ECCN 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z. A license will be required under paragraph (a)(3)(i) for the export, reexport, or transfer (in-country) to or within any destination not specified in Country Groups D:1, D:4, or D:5 (excluding any destination also specified in Country Groups A:5 or A:6) of commodities identified in ECCNs 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, or 5D002.z, or 5D992.z when the exporter, reexporter, or transferor has ''knowledge'' at the time of the export, reexport, or transfer (in-country) that item is destined for any entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5. This additional end-use control is needed to ensure that the national security objectives of the October 7 IFR and this AC/S IFR are not undermined by Macau, PRC or other Country Group D:5 entities setting up cloud or data servers in other countries to allow these headquartered companies of concern to continue to train their AI models in ways that would be contrary to U.S. national security interests. This expanded end-use control is intended to target entities of concern, such as a PRC-headquartered cloud or data server provider located outside of China in a destination other than Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6. The license requirements under this end-use control apply to destinations in Country Group A:5 and A:6 and any other destination not specified in Country Groups D:1, D:4, or D:5.

B. Addition of end-use control for ''production'' of advanced computing items in any destination worldwide when using certain direct products exported from Macau or a destination specified in Country Group.

This AC/S IFR adds an additional end-use control for the items identified under paragraph (a)(3)(ii) to specify an end-use control applies to any ''technology'' subject to the EAR and specified in ECCN 3E001 (for 3A090) ''technology'' when the technology meets all of the following: the technology is developed by an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5; the technology is subject to the EAR pursuant to the FDP rule in § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR; and the technology is for the reexport or transfer (in-country) from or within Macau or a

destination specified in Country Group D:5to any destination worldwide of 3E001. The FDP rule requirement highlighted above is intended to better ensure the intent of these two FDP rules are not able to be circumvented by trying to conduct these types of activities outside of Macau or destinations specified in Country Group D:5 by entities headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

C. Expansion of Country Scope to conform to broader country scope included in this AC/S IFR.

This AC/S IFR as a conforming change also revises paragraphs (a)(1)(ii)(A) and (B) and (a)(2)(i) and (ii) to remove China and add in its place the broader country scope of Macau and any destination specified in Country Group D:5.

D. Revision of Supercomputer end-use control.

This AC/S IFR revises paragraph (a)(1)(ii)(A) and (B) to broaden the destination scope of the supercomputer end-use control by replacing ''China or Macau'' with ''Macau or a destination specified in Country Group D:5.''

7. Addition of ECCNs 3A991.p .z, 4A994.l, or .z to License Exception CCD

In § 740.19 Consumer communications devices (CCD), this final rule adds a new paragraph (b)(17) to add commodities described under 3A991.p or 4A994.l, as commodities eligible for License Exception CCD. ECCNs 3A991.p and 4A994.l were not included in the October 7 IFR. BIS determined it is warranted to add these commodities as eligible commodities under License exception CCD because these ECCNs are for low-level items and are in line with other items identified as eligible for License Exception CCD. This AC/S IFR as a conforming change also revises paragraph (b)(16) to remove the period and add a semi-colon and the word ''and'' after the semi-colon to reflect the addition of new paragraph (b)(17).

8. Broadening the Country Scope of the Advanced Computing FDP Rule

In § 734.9(h) (Advanced computing FDP rule), this AC/S IFR broadens the country scope of the advanced computing FDP rule by revising paragraph (h)(2) (Destination or end use scope of the advanced computing FDP rule). Specifically, BIS revises paragraphs (h)(2)(i) and (ii) by removing ''PRC or Macau'' and adding in its place a ''destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6.'' Under revised paragraph (h)(2)(i) the country scope also extends worldwide when the ''direct product'' is to or for an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Groups D:5. This AC/IFR also adds a new Note to paragraph (h)(2) to clarify that the requirements apply when any of these headquartered in or whose ultimate parent company is headquartered in, companies are a party to the transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.'' Additional corrections and clarifications to this section are described in Section C.11.A of this rule.

9. Clarification That Model Certificate May Be Used for All Foreign Direct Product (FDP) Rules

In supplement no. 1 to part 734—Model Certification for Purposes of Advanced Computing FDP rule, this AC/S IFR revises the heading to Model Certification for Purposes of the FDP rules, and revises paragraph (a) of that supplement to clarify that the model certification may be used for any of the FDP rules under § 734.9. This AC/S IFR revises paragraph (a) to clarify that the model certificate may be provided by any entity in a supply chain or to an exporter, reexporter, or transferor of the item. In addition, this rule adds an example to improve public understanding that the model certification may flow more than one way (forward or backwards) in a supply chain.

This AC/S IFR also revises paragraph (b) (model criteria), to revise the introductory text of paragraph (b) and the text of paragraph (b)(2) to make the model certification applicable for any of the FDP rules under § 734.9. New paragraphs (b)(2)(i) through (ix) to provide model criteria for any of the FDP rules that is applicable to their scenario.

This AC/S IFR removes paragraph (b)(3) because the substance of paragraph (b)(3) is already addressed under paragraph (b)(2).

This AC/S IFR also redesignates paragraph (b)(4) as (3) and revises the newly redesignated paragraph to make a conforming edit to add the phrase ''or exporter(s), reexporter(s), or transferor(s)'' to clarify that the model certification can flow in either direction in a supply chain. This AC/S IFR also revises Note 1 to paragraph (b) to clarify that the model certification can flow from the exporter, reexporter, or transferor to another entity in the supply chain or may flow the other way from a consignee back to an exporter, reexporter, or transferor in the supply chain. The purpose of the model certification is to enhance awareness of the potential applicability of the FDP rules in supply chains, so there is flexibility for how entities use the model certification between different entities involved in supply chains to help achieve that objective.

10. Changes To Enhance and Assist With Compliance

A. Addition of five new red flags to assist with compliance.

In supplement no. 3 to part 732—BIS's ''Know Your Customer'' Guidance and Red Flags, this AC/S IFR adds five new red flags that are intended to provide additional compliance guidance to assist exporters, reexporters, and transferors as part of their compliance programs for the October 7 IFR. Several commenters on the October 7 IFR requested BIS add red flags to the EAR that have applicability for the types of transactions involving items from the October 7 IFR, similar to what was done when the ''600 series'' military items were moved to the EAR under Export Control Reform. BIS agreed with the commenters and adds five new red flags to assist exporters, reexports, and transfers identify potential red flags.

New red flag 15 identifies a scenario where, prior to the October 7 IFR, a customer's website or other marketing materials indicated that the company had advertised or otherwise indicated its capability for ''developing'' or ''producing'' ''advanced-node integrated circuits.'' This type of activity would raise a red flag and require additional due diligence.

New red flag 16 is a variant of some of the red flags regarding a mismatch between what a customer says an item would be used for, and the item's traditional use. New red flag 16 provides a similar type of example but makes it specific to items intended for the ''development'' or ''production'' of ''advanced-node integrated circuits.''

New red flag 17 identifies a scenario where the customer is ''known'' to ''develop'' or ''produce'' items for companies located in Macau or a destination specified in Country Group D:5 that are involved with supercomputers, which would also trigger a red flag under the EAR. This type of scenario may be indicative that the items that are being ''developed'' or ''produced'' may be for use in supercomputers and warrants additional due diligence.

New red flag 18 addresses how exporters, reexporters, or transferors should evaluate anticipated future capabilities, which was another issue about which commenters sought additional compliance guidance, in particular the end-use controls under § 744.23(a)(2)(i), (ii), or (iii), which have been redesignated as paragraph (a)(1)(i)(A) and (B) and (a)(2)(i) in this SME IFR. New red flag 18 specifies that in scenarios where a customer has indicated intent to ''develop'' or ''produce'' supercomputers or integrated circuits in Macau or a destination specified in Country Group D:5 in the future that would otherwise be restricted under § 744.23(a)(2)(i), (ii), or (iii), redesignated as paragraphs (a)(1)(i)(A) and (B) and (a)(2)(i), raises a red flag under the EAR.

New red flag 19 addresses how semiconductor fabrication facilities can identify when they receive an order from a destination in Country Groups D:1, D:4, or D:5 or worldwide from an entity headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 where the item to be produced is likely a ''direct product'' that will be subject to the EAR under § 734.9(h). Red flag 19 is part of BIS's efforts to provide guidance to semiconductor fabrication facilities trying to develop enhanced FDP guidance for recognizing ''direct products.'' Specifically, BIS is adding this new red flag 19 to better assist any semiconductor fabrication facility that is or will be producing, for a company headquartered in or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 an IC, or a computer, ''electronic assembly,'' or ''component'' that incorporates an IC that meets certain specified criteria under § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*) that there is a high degree of likelihood (''knowledge'') that the ''direct product'' that is or will be ''produced'' is within the product scope of § 734.9(h). This criteria specifies that if the item that is or will be produced is an IC, or a computer, ''electronic assembly,'' or ''component'' that incorporates more than 50 billion transistors and high-bandwidth memory (HBM), it raises a red flag that there is a high degree of likelihood that a license is required under the EAR for reexport or export from abroad of that ''direct product'' if destined to any destination in Country Groups D:1, D:4, or D:5 excluding destinations also specified in Country Groups A:5 or A:6 unless the red flag is resolved. BIS emphasizes here in this AC/S IFR that red flag 19 is only applicable if the entity has ''knowledge'' the criteria of the red flag 19 are met. If the entity does not have ''knowledge'' that the transaction would otherwise meet the criteria under red flag 19, then this red flag is not applicable.

A reexporter or transferor may take additional steps as part of their compliance program to attempt to resolve the red flag, *e.g.,* obtaining additional information from the entity requesting the item to be produced, in order to determine whether the item being produced is outside the scope of § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*). The addition of red flag 19 in this rule includes adding a Technical note to (b)19, which will provide technical guidance on how to calculate the red flag criteria under red flag 19. A reexporter or transferor may also submit a license to BIS to ask for assistance in determining whether the foreign item to be produced, is subject to the EAR as a ''direct product'' on the basis of the § 734.9(h), but BIS encourages semiconductor fabrication facilities to try to resolve these red flags themselves before applying for a license. Direct products that are subject to the EAR under paragraphs (h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*) of § 734.9 require a license under the EAR for reexport or export from abroad of that direct product if destined to any destination specified in Country Groups D:1, D:4 or D:5 that is not also specified in Country Groups A:5 or A:6. BIS notes that this red flag 19 can be overcome with positive ''knowledge'' of the classification of the item that is or will be produced, provided the semiconductor fabrication facility has positively determined that the item that is or will be produced is not an item identified under paragraph (h)(1)(i)(B)(*2*) or (h)(1)(ii)(B)(*2*), then that foreign made product is not subject to the EAR on the basis of § 734.9(h).

BIS is also interested in soliciting additional public comments in this area of identifying ways to assist semiconductor fabrication facility compliance in recognizing ''direct products.'' See section D of this rule for the additional comments BIS is interested in receiving in this area.

11. Changes To Minimize the Impact on Supply Chains—Adoption of TGL—Advanced Computing Items

In supplement no. 1 to part 736—General Orders, this AC/S IFR, revises paragraph (d) (General Order No. 4) to add a new paragraph (d)(2) (TGL—Advanced computing items). The new TGL for advanced computing items will overcome the license requirements specified in § 742.6(a)(6)(iii), provided the terms and conditions under paragraphs (d)(3) through (5) are met. This AC/S IFR adds new paragraph (d)(2)(i) (*Product scope*) to specify the items that may be authorized under this new TGL. These items are limited to the items subject to the EAR that are specified in ECCNs 3A001.z; 3A090; 3D001 (for ''software'' for commodities controlled by 3A001.z, 3A090); 3E001 (for ''technology'' for commodities controlled by 3A001.z, 3A090); 4A003.z; 4A004.z; 4A005.z; 4A090; 4D001 (for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 4D090; 4E001 (for ''technology'' for commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D090); 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for ''technology'' for commodities controlled by 5A002.z or 5A004.z or ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities)); or 5E992 (for ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z).

The TGL—Advanced computing items is limited to the end use scope specified in paragraphs (d)(2)(ii) (*End-use scope*). Paragraph (d)(2)(i) has a different product scope than the original TGL that was included in the October 7 IFR, but is otherwise similar in the scope of activity authorized, although the destination scope is broader. Paragraph (d)(2)(ii) requires that the recipient (1) is located in, but not headquartered in or whose ultimate parent company is not headquartered in, a destination specified in Country Groups D:1, D:4, or D:5 that is not also specified in Country Groups A:5 or A:6. The end-use scope of this paragraph authorizes entities to continue or engage in integration, assembly (mounting), inspection, testing, quality assurance, and distribution of items covered by items specified in paragraph (d)(2)(i) provided the items are for ultimate end use (1) outside of destinations specified in Country Groups D:1, D:4, or D:5, excluding destinations also specified in Country Groups A:5 or A:6, and (2) by entities that are not headquartered in, or whose ultimate parent company is not headquartered in, Macau or Country Group D:5.

This AC/S IFR, as additional conforming changes to the TGL revisions made in the SME IFR, revises the introductory text of paragraph (d) (General Order No. 4) to add a reference to paragraph (d)(2) that this AC/S IFR adds. This AC/S IFR also revises

paragraph (d)(3) (Validity date) to add a sentence to specify the validity date for paragraph (d)(2). The TGL under paragraph (d)(1) (added in this SME IFR) of supplement no. 1 to part 736 and the TGL under paragraph (d)(2) (added in this AC/S IFR) of supplement no. 1 to part 736 will both expire on December 31, 2025, approximately a 2-year validity period. This AC/S IFR also revises paragraph (d)(4) (End-use and end-user restrictions) to revises paragraph (d)(4)(i) *(Restrictions related to part 744)* to add a reference to new paragraph (d)(2). This AC/S IFR under paragraph (d)(4)(ii) (*Indigenous production*) redesignates the text added in this SME IFR as new paragraph (d)(4)(ii)(A) and adds a new paragraph (d)(4)(ii)(B) to impose a similar restriction on indigenous production, but specific to the new TGL—Advanced computing items added under paragraph (d)(2).

12. Additional Corrections and Clarifications

A. Conforming changes to headings for the Foreign Direct Product (FDP) rules for clarity and consistency with advanced computing rule.

In § 734.9, this AC/S IFR also revises paragraph (a) to: add the paragraph heading (Definitions and model certification); redesignate the existing Definitions text as new paragraph (a)(1) (Definitions); and move and redesignate existing paragraph (h)(3) as new paragraph (a)(2) (Model certification). This rule also makes conforming changes to reflect that the model certification may be used for any of the FDP rules in § 734.9 instead of being limited for use with the advanced computing FDP rule under § 734.9(h).

In § 734.9 (Foreign Direct Product (FDP) Rules), this AC/S IFR makes conforming changes to the headings of paragraphs (b)(1)(ii), (c)(1)(ii), (d)(1)(ii), (f)(1)(ii), and (g)(1)(ii) by removing the heading '' ''Direct product'' of a complete plant or 'major component' of a plant'' and adding in its place the heading ''Product of a complete plant or 'major component' of a plant that is a ''direct product''.'' This change is made to conform these paragraph headings to the headings used in the advanced computing rule for paragraphs (e)(1)(i)(B), (e)(2)(i)(B), (h)(1)(ii), and (i)(1)(i)(B) of § 734.9.

In § 734.9, this AC/S IFR, as a clarifying change, revises the first sentence of the introductory text of the section, and paragraphs (e)(1)(i)(B), (e)(2)(i)(B), (f)(1)(ii)(A), (g)(1)(ii), and (i)(1)(ii) to remove the term 'plant' and add in its place the more precise term 'complete plant.' This AC/S IFR makes this change, so the term 'complete plant' is used consistently throughout the section. For purposes of this section, prior to publication of this rule, BIS interpreted the term 'plant' and 'complete plant' the same, so this is not a substantive change, but is intended to reduce any confusion regarding whether the two formulations of the term have different meanings. Additional changes were made throughout the section to ensure that the complete plant provisions are identical.

In § 734.3 (Items subject to the EAR), this AC/S IFR makes a conforming change to paragraphs (a)(4) and (5) to remove the reference to § 736.2(b)(3) and add in its place a reference to § 734.9. Also in § 734.3, this AC/S IFR as a conforming change to § 734.9, revises paragraph (a)(5) to remove the term ''direct products'' and add in its place the term products, so it reads certain foreign-produced products and adds the phrase ''that is a ''direct product'' of specified ''technology'' or ''software'' '' after the phrase products of a complete plant or major component of plant. This change is made to conform with the other clarifications made on this under § 734.9.

B. Clarifying changes.

In supplement no. 1 to part 774—Commerce Control List, this AC/S IFR revises four ECCNs as follows:

In ECCN 4A090, this AC/S IFR revises ''items'' paragraph (a) in the List of Items Controlled section, to add the words ''meets or,'' to make it clear that this control parameter applies to computers, ''electronic assemblies,'' and ''components'' containing integrated circuits, any of which meets or exceeds the performance parameters of ECCN 3A090.a.

In ECCN 4A994, this AC/S IFR revises ''items'' paragraph (l) in the List of Items Controlled section, to add the words ''meets or,'' to make it clear that this control parameter applies to computers, ''electronic assemblies,'' and ''components,'' n.e.s., containing integrated circuits, any of which meets or exceeds the performance parameters of ECCN 3A991.p.

In ECCNs 5A992 and 5D992, this AC/S IFR revises the Country Chart column in the License Requirements section in both of these ECCNs to revise ''RS'' control to specify the RS control applies to .z items in these ECCNs and the license requirement applies to or within destinations specified in Country Groups D:1, D:4, and D:5 that are not also specified in Country Groups A:5 or A:6, along with adding a cross reference to *see* § 742.6(a)(6)(iii) of the EAR. This change is made for consistency with the other ECCNs that reference § 742.6(a)(6), which specify China and Macao.

C. Conforming changes to ECCNs to not undermine deemed export and deemed reexport exclusion.

This AC/S IFR revises two ECCNs: 4D001 and 4E001 to make conforming changes to ensure these National Security (NS) controlled software and technology controls do not undermine the intent of the deemed export and deemed reexport exclusion under § 742.6(a)(6)(iv). This AC/S IFR does this by adding exclusions where needed to each of these NS controlled ECCNs to exclude the relevant software and technology from these ECCNs that are associated with ECCNs 4A090 and 4D090. This software and technology were intended to be excluded from these NS controls but were inadvertently not excluded in the October 7 IFR. To correct this oversight, this rule makes the following changes to two ECCNs:

In ECCN 4D001, this rule revises ''items'' paragraph (a) in the List of Items Controlled section to add an exclusion for 4D090 for the software controlled under 4D001.a.

In ECCN 4E001, this rule revises the NS control column the License Requirements section to exclude technology for 4A090 or ''software'' specified by ECCN 4D090 from the NS control under 4E001.

D. Typographical, grammatical, and other conforming corrections.

In § 732.2(b) introductory text, this AC/S IFR makes a conforming change to the third sentence that referenced supplement no. 1 to part 734 which, prior to September 1, 2016, described several practical examples describing publicly available technology and software that are outside the scope of the EAR. These examples were removed from the EAR on September 1, 2016, and are now found on the BIS website, but the needed conforming change was not made at that time to this paragraph (b). Subsequently, the October 7 IFR added a new supplement no. 1 to part 734, but also inadvertently did not update this reference to supplement no. 1 to part 734 in § 732.2(b). However, in the context of this paragraph, supplement no. 1 to part 734 should no longer be referenced and instead a reference to the FAQ guidance on the BIS website at *https://www.bis.doc.gov* should replace this text. This rule revises the third sentence to make this change and adds a cross reference by adding a new fourth sentence to inform the public to *See* the FAQs under the heading, *EAR Definitions, Technology and Software, Fundamental Research, and Patents FAQs,* for where the

guidance can be found on the BIS website. This rule also makes this same type of conforming change to § 734.2(a)(1).

In § 734.9, this AC/S IFR revises paragraph (h)(3) to make a grammatical correction to remove an unneeded ''s'' from the word ''items.'' As described above, this rule also redesignates paragraph (h)(3) as new paragraph (a)(2).

D. BIS Seeks Public Comments on the Following Additional Questions

In addition to welcoming comments on the topics and BIS responses and description of the regulatory changes described above under sections A through C, BIS in this AC/S IFR also specifically seeks comments on the following questions:

1. *Addressing access to* ''*development*'' *at an infrastructure as a service (IaaS) provider by customers to develop or with the intent to develop large dual-use AI foundation models with potential capabilities of concern, such as models exceeding certain thresholds of parameter count, training compute, and/or training data.* This AC/S IFR seeks public comments on what additional regulations or other requirements may be warranted to address this national security concern relating to AI. BIS also seeks input from IaaS providers on the feasibility for them in complying with additional regulations in this area, how they would identify whether a customer is ''developing'' or ''producing'' a dual-use AI foundation model, and what actions would be needed to address this national security concern while minimizing the business process changes that would be required to comply with these regulations.

2. *Developing technical solutions to exempt items otherwise classified under ECCNs 3A090 and 4A090.* This AC/S IFR seeks public comments on proposed technical solutions that limit items specified under ECCN 3A090 or 4A090 from being used in conjunction with large numbers of other such items in ways that enable training large dual-use AI foundation models with capabilities of concern. Such items could then be exempted from these ECCNs. An example approach would be to limit a product that contains a set of ICs, including ECCN 3A090 AI accelerators, CPUs, and network interface cards—which could form a high-bandwidth domain including up to *e.g.,* 256 AI accelerators, from communicating outside the product or set beyond 1 GB/s in at least one of the input or output direction. In one possible implementation of this concept, each device in the set might provide a cryptographic signature to other devices in the set, and then have a tamperproof silicon root-of-trust in each device that would hold the private keys for the cryptographic signatures. This approach could constrain a 3A090 item from being used to train large dual-use AI foundation models with capabilities of concern, while allowing AI training capabilities at a small or medium scale. In particular, the AC/S IFR seeks specific technical proposals that would be difficult to circumvent; comments on the timeline and costs to bring such proposals to market; and comments on the demand for such ICs and products. The AC/S IFR also seeks additional proposals for exemptions involving hardware-based technical solutions that create the ability to limit training of large dual-use AI foundation models with capabilities of concern.

3. *Identifying ways to assist semiconductor fabrication facility compliance in recognizing* ''*direct products.*'' As discussed further under section C.10 above, this AC/S IFR adds new red flag 19 in supplement no. 3 to part 732 of the EAR to assist *any facility where* ''*production*'' *of* ''*advanced node ICs*'' occurs to follow guidance to recognize ''direct products.'' New red flag 19 will assist semiconductor fabrication facilities to more easily identify ''direct products'' that they are or will be producing that are subject to the EAR on the basis of the FDP rule. In order to be most effective, this enhanced FDP guidance or any additional guidance that is developed needs to identify criteria that (1) are already ''knowable'' or easily determined by the semiconductor fabrication facilities and (2) should be highly indicative of an IC that will meet the FDP scope under § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*). BIS believes that the criteria added under new red flag 19 meets this two-part test and will assist semiconductor manufacturing facilities to more easily identify their regulatory obligations under the EAR. However, in addition to the criteria BIS included in new red flag 19 in supplement no. 3 to part 732, BIS also seeks any refinements to those criteria or alternative criteria that would better achieve those two objectives.

4. *Deemed exports and deemed reexports.* BIS specifically seeks public comment on the applicability of deemed exports and deemed reexports in § 742.6(a)(6)(iv). Commenters are asked to provide feedback regarding the impact of this provision on their business and operations, in particular, what if any impact companies would experience if a license were required for deemed exports and deemed reexports. Commenters are also asked to provide guidance on what, if any, practices are utilized to safeguard technology and intellectual property and the role of foreign person employees in obtaining and maintaining U.S. technology leadership.

5. *Control parameters under 3A090, in particular Note 2 to 3A090.* In response to this AC/S IFR, BIS seeks comments on how to refine the parameters under ECCN 3A090 to more granularly cover only ICs that would raise concerns for use in training large-scale AI systems and to and to more specifically define ICs not designed or marketed for us in datacenters.

6. *Definition of headquartered companies.* BIS seeks comments on the definition entities headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, including comments on the ability to access information required to assess the status of a foreign party and any other factors that would support the policy goal of limiting access to advanced computing capability by Macau parties or a destination specified in Country Group D:5 parties.

7. BIS is interested in receiving public comments in response to this AC/S IFR on the technical parameters included in the definition of ''supercomputer'' and how those relate to the end-use control under § 744.23(a)(1). BIS is particularly interested in whether the definition of ''supercomputer'' may result increasingly in commercial datacenters falling under the definition of ''supercomputer'' and the end-use control under § 744.23(a)(1). BIS welcomes comments on the definition of ''supercomputer,'' as well on what additional criteria could be added to § 744.23(a)(1) to better focus the control to ensure that supercomputers used to support foreign government agencies would be caught under the end-use control, but other datacenters strictly involved in the commercial sector would not be covered.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs

and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects and distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This interim final rule has been designated a ''significant regulatory action'' under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute;
- 0694–0122, ''Licensing Responsibilities and Enforcement;'' and
- 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission.

This AC/S IFR will affect the collection under control number 0694–0088, for the multipurpose application because of the addition of the notification requirement for exports and reexports to China in order to use new License Exception Notified Advanced Computing (NAC) under § 740.8 that this rule adds to the EAR. BIS estimates that the new License Exception NAC notification will result in an increase of 3,000 multi-purpose applications submitted annually to BIS and an increase of 950 burden hours under this collection. BIS also anticipates the submission annually of 200 license applications as a result of the revision to license requirements included in this AC/S IFR, but because the original estimate that was included in the October 7 IFR (*i.e.,* that BIS estimates that these new controls under the EAR imposed by the October 7 IFR would result in an increase of 1,700 license applications submitted annually to BIS) was higher than the actual number of license applications BIS has received over the first year of the October IFR changes being in place, BIS does not anticipate any changes in these estimates as a result of the changes include in this AC/S IFR for license applications submitted to BIS as a result of this AC/S IFR with the one exception of the increase in burden hours for the License Exception NAC notifications, which was not accounted for in the October 7 IFR because License Exception NAC was not part of the EAR at that time.

This AC/S IFR will affect the information collection under control number 0607–0152, for filing EEI in AES because this rule adds § 758.1(g)(5) to impose a requirement for identifying .z items by ''items'' level classification in the EEI filing in AES. This change is not anticipated to result in a change in the burden under this collection because filers are already required to provide a description in the Commodity description block in the EEI filing in AES. This regulation also involves a collection previously approved by the OMB under control number 0694–0122, ''Licensing Responsibilities and Enforcement'' because this rule under the revision to § 758.6(a)(2) will require the ECCN(s) for any 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z to be included on the commercial invoice, similar to the previous requirement to include the ''600 series'' and 9x515 ECCNs on the commercial invoice. BIS does not anticipate a change in the total burden hours associated with the PRA and OMB control number 0694–0122 as a result of this rule.

Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Parts 732 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 740 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Parts 736, 770, and 772

Exports.

For the reasons stated in the preamble, parts 732, 734, 736, 740, 742, 744, 746, 748, 758, 770, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 732—STEPS FOR USING THE EAR

■ 1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Effective November 17, 2023, § 732.2 is amended by revising paragraph (b) introductory text to read as follows:

§ 732.2 Steps regarding scope of the EAR.

* * * * *

(b) *Step 2: Publicly available technology and software.* This step is relevant for both exports and reexports. Determine if your technology or

software is publicly available as defined and explained at part 734 of the EAR. The Bureau of Industry and Security (BIS) website at *https://www.bis.doc.gov* contains several practical examples describing publicly available technology and software that are outside the scope of the EAR under the FAQ section of the website. *See* the FAQs under the heading, *EAR Definitions, Technology and Software, Fundamental Research, and Patents FAQs at https://www.bis.doc.gov/index.php/documents/compliance-training/export-administration-regulations-training/1554-ear-definitions-faq/file.* The examples are illustrative, not comprehensive. Note that encryption software classified under ECCN 5D002 on the Commerce Control List (refer to supplement no.1 to part 774 of the EAR) is subject to the EAR even if publicly available, except for publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR. The following also remains subject to the EAR: ''software'' or ''technology'' for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501, as referenced in § 734.7(c) of the EAR.

* * * * *

■ 3. Effective November 17, 2023, supplement no. 3 to part 732 is amended by adding paragraphs (b)15 through 19 to read as follows:

Supplement No. 3 to Part 732—BIS's ''Know Your Customer'' Guidance and Red Flags

* * * * *

(b) * * *

15. The customer's website or other marketing materials prior to October 7, 2022, indicated that the company had advertised or otherwise indicated its capability for ''developing'' or ''producing'' ''advanced-node integrated circuits.''

16. The customer has made representations that the items in question are not intended for use in the ''development'' or ''production'' of ''advanced-node integrated circuits,'' but the items that are being requested to be exported, reexported, or transferred (in-country) to this customer are typically exclusively or predominantly used for the production of ''advanced-node integrated circuits.''

17. The customer is ''known'' to ''develop'' or ''produce'' items for companies located in Macau or a destination specified in Country Group D:5 that are involved with ''supercomputers.''

18. The exporter has ''knowledge'' indicating this customer intends to ''develop'' or ''produce'' ''supercomputers'' or integrated circuits in the future that would otherwise be restricted under § 744.23(a)(1)(i) or (a)(2)(i).

19. The exporter has ''knowledge'' that it is or seeks to be producing at a facility where ''production'' of ''advanced node ICs'' occur, for a company headquartered in either Macau or a destination specified in Country Group D:5, an integrated circuit, or a computer, ''electronic assembly,'' or ''component'' that will incorporate (A) more than 50 billion transistors and (B) high-bandwidth memory (HBM). This raises a red flag that needs to be resolved or a license may be required under the EAR for reexport or export from abroad of that direct product if destined to Macau or a destination specified in Country Group D:5 (see supplement no. 1 to part 774 and part 742 of the EAR for the CCL-based license requirements for items identified under § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*) of the EAR), absent a determination that the item being produced is outside the product scope of these paragraphs under § 734.9(h)(1)(i)(B)(*2*) and (h)(1)(ii)(B)(*2*).

Technical note to (b)19: To calculate the number of transistors within a die, a foundry has two options. First, the foundry may take the transistor density of the process node used to manufacture the die and multiply this density by the area of the die. This number may be significantly higher than the true transistor count, but if the result is below the relevant transistor threshold, then the foundry can be confident that the die in question will not exceed that threshold. Second, to adjudicate edge cases, the foundry may use standard design verification tools to estimate the number of (both active and passive) transistors on the die using the GDS file. Regardless of approach, if the foundry has knowledge that multiple chiplets will be included in a single package, then the foundry should estimate the aggregate number of transistors in any chiplets the foundry is responsible for manufacturing. A foundry does not need to count the transistors of chiplets that it is not responsible for manufacturing itself.

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 4. Effective November 17, 2023, the authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563.

■ 5. Effective November 17, 2023, § 734.2 is amended by revising the last sentence of paragraph (a)(1) and adding three sentences at the end of the paragraph to read as follows:

§ 734.2 Subject to the EAR.

(a) * * *

(1) * * * Publicly available technology and software not subject to the EAR are described in §§ 734.7, 734.8, and 734.10. The Bureau of Industry and Security (BIS) website at *https://www.bis.doc.gov* contains several practical examples describing publicly available technology and software that are outside the scope of the EAR under the FAQ section of the website. *See* the FAQs under the heading, *EAR Definitions, Technology and Software, Fundamental Research, and Patents FAQs.* The examples are illustrative, not comprehensive.

* * * * *

■ 6. Effective November 17, 2023, § 734.3 is amended by revising paragraphs (a)(4) and (5) to read as follows:

§ 734.3 Items subject to the EAR.

(a) * * *

(4) Certain foreign-produced ''direct products'' of specified ''technology'' and ''software,'' as described in § 734.9 of the EAR; and

Note to paragraph (a)(4): Certain foreign-manufactured items developed or produced from U.S.-origin encryption items exported pursuant to License Exception ENC are subject to the EAR. See § 740.17(a) of the EAR.

(5) Certain foreign-produced products of a complete plant or any major component of a plant that is a ''direct product'' of specified ''technology'' or ''software'' as described in § 734.9 of the EAR.

* * * * *

■ 7. Effective November 17, 2023, § 734.4 is amended by revising paragraph (b)(2) to read as follows:

§ 734.4 De minimis U.S. content.

* * * * *

(b) * * *

(2) The U.S.-origin encryption items are classified under ECCNs 5A992, 5D992, or 5E992.b.

* * * * *

■ 8. Effective November 17, 2023, § 734.9 is amended by:

■ a. Revising the first sentence of the introductory text and paragraph (a), the headings for paragraphs (b)(1)(ii), (c)(1)(ii), and (d)(1)(ii), revising paragraphs (e)(1)(i)(B), (e)(2)(i)(B), the heading for paragraph (f)(1)(ii), and revising paragraphs (f)(1)(ii)(A), (g)(1)(ii), (h)(1)(i)(B)(*2*), (h)(1)(ii)(B)(2), and (h)(2)(i) and (ii);

■ b. Adding a note to paragraph (h)(2);

■ c. Removing paragraph (h)(3); and

■ d. Revising paragraph (i)(1)(ii).

The revisions and addition read as follows:

§ 734.9 Foreign-Direct Product (FDP) Rules.

Foreign-produced items located outside the United States are subject to

the EAR when they are a ''direct product'' of specified ''technology'' or ''software,'' or are produced by a complete plant or 'major component' of a plant that itself is a ''direct product'' of specified ''technology'' or ''software.''

* * *

(a) *Definitions and model certification*—(1) *Definitions.* The terms defined in this paragraph are specific to § 734.9 of the EAR. These terms are indicated by single quotation marks. Terms that are in double quotation marks are defined in part 772 of the EAR.

(i) *Major component.* A major component of a plant located outside the United States means ''equipment'' that is essential to the ''production'' of an item, including testing ''equipment.''

(ii) [Reserved]

(2) *Model certification.* Exporters, reexporters, and transferors may obtain a written certification from a supplier that asserts an item being provided would be subject to the EAR if future transactions meet the destination or end user scope of one or more of the Foreign Direct Product (FDP) rules under § 734.9. The model certificate described by BIS in supplement no. 1 to part 734 is not required under the EAR, but through its provision, the certificate may assist exporters, reexporters, and transferors with the process of resolving potential red flags regarding whether an item is subject to the EAR based on § 734.9. The model certificate provided by BIS contemplates signature by an official or designated employee of the certifying company and inclusion of all the information described in paragraph (b) of supplement no. 1 to part 734. While this certificate is expected to be useful for a company to understand the application of the EAR to an item, BIS does not view this as the only step to be completed during a company's due diligence process. *See* supplement no. 1 to part 734 and supplement no. 3 to part 732 of the EAR.

(b) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* * * *

* * * * *

(c) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* * * *

* * * * *

(d) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* * * *

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL.

* * * * *

(2) * * *

(i) * * *

(B) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the U.S. or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL.

(f) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* * * *

(A) A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in any ECCN in product groups D or E of the CCL; and

* * * * *

(g) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in any ECCN in product groups D or E in any categories of the CCL.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) An integrated circuit, computer, ''electronic assembly,'' or ''component'' specified in ECCN 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z.

(ii) * * *

(B) * * *

(*2*) An integrated circuit, computer, ''electronic assembly,'' or ''component'' specified in ECCN 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z.

* * * * *

(2) * * *

(i) Destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or will be incorporated into any ''part,'' ''component,'' ''computer,'' or ''equipment'' not designated EAR99 that is destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or worldwide to an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5; or

(ii) ''Technology'' ''developed'' by an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, for the ''production'' of a mask or an integrated circuit wafer or die.

Note to paragraph (h)(2): These end-use requirements under paragraph (h) apply when any entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or destination specified in Country Group D:5, is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

(i) * * *

(1) * * *

(ii) *Product of a complete plant or 'major component' of a plant that is a ''direct product.''* A foreign-produced

item meets the product scope of this paragraph if the foreign-produced item is produced by any complete plant or 'major component' of a plant that is located outside the United States, when the complete plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D994, 4E001, 4E992, 4E993, 5D001, 5D002, 5D991, 5E001, 5E002, or 5E991 of the CCL.

* * * * *

■ 9. Effective November 17, 2023, supplement no. 1 to part 734 is revised to read as follows:

Supplement No. 1 to Part 734—Model Certification for Purposes of the FDP Rule

(a) *General.* This supplement is included in the EAR to assist exporters, reexporters, and transferors in determining whether the items being exported, reexported, or transferred (in-country) are subject to the EAR based on one or more of the Foreign Direct Product (FDP) rules under § 734.9. The model certificate provided by BIS in supplement no. 1 to this part is not required under the EAR, but through its provision, the certificate may assist exporters, reexporters, and transferors with the process of resolving potential red flags regarding whether an item is subject to the EAR based on one or more of the FDP rules under § 734.9. The model certificate provided in this supplement by BIS contemplates signature by an official or designated employee of the certifying company and inclusion of the information described in paragraph (b) of this supplement. The certificate may be provided by any entity in a supply chain or by an exporter, reexporter, or transferor of the item. For example, the certificate may be provided by an exporter, reexporter, or transferor to any other entity later in a supply chain. Similarly, any entity later in a supply chain may request a certificate from an exporter, reexporter, or transferor earlier in a supply chain. Any certification relied on for this part must be retained pursuant to recordkeeping provisions in part 762 of the EAR. Obtaining the certification set forth in this supplement no. 1 to part 734 does not relieve exporters, reexporters and transferors of their obligation to exercise due diligence in determining whether items are subject to the EAR, including by following the ''Know Your Customer'' guidance in supplement no. 3 to part 732 of the EAR.

(b) *Model criteria.* A certification will be most useful if it meets the criteria described in this supplement and if it contains at least the following information:

(1) The certification must be signed by an organization official specifically authorized to certify the document as being accurate and complete. The certifying official attests that the information herein supplied in response to this paragraph is complete and correct to the best of his/her ''knowledge.''

(2) The organization [INSERT NAME OF THE CERTIFYING OFFICIAL'S COMPANY] has reviewed the criteria for the foreign direct product (FDP) rules under § 734.9 the U.S. Export Administration Regulations (EAR) (15 CFR 730–774) and attests that from the certifying official's ''knowledge'' of the item, [INSERT A DESCRIPTION OF THE ITEMS], provided to [INSERT NAME OF THIS CUSTOMER], are subject to the EAR if future transactions are within the country/destination and/or end use scope or end-user scope of one or more of the following FDP rules [include whichever ones are applicable]:

(i) Country scope of § 734.9(b)(2), *i.e.,* exported or reexported to or transferred within a destination listed in Country Group D:1, E:1, or E:2 (see supplement no.1 to part 740 of the EAR);

(ii) Country scope of § 734.9(c)(2), *i.e.,* exported or reexported to or transferred within a destination listed in Country Group D:5, E:1, or E:2 (see supplement no.1 to part 740 of the EAR);

(iii) Country scope of § 734.9(d)(2), *i.e.,* exported or reexported to or transferred within a destination listed in Country Group D:1, D:3, D:4, D:5, E:1, or E:2 (see supplement no.1 to part 740 of the EAR);

(iv) End-user scope of § 734.9(e)(1)(ii) or (e)(2)(ii) for a Footnote 1 or Footnote 4 entity, respectively (see supplement no. 4 to part 744);

(v) Destination scope of § 734.9(f)(2), *i.e.,* exported or reexported to or transferred within Russia, Belarus, or the temporarily occupied Crimea region of Ukraine or will be incorporated into or used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' specified in any ECCN on the CCL or in supplement no. 6 or 7 to part 746 of the EAR and produced in or destined to Russia, Belarus, or the temporarily occupied Crimea region of Ukraine;

(vi) End-user scope of § 734.9(g)(2) for a Footnote 3 entity (see supplement no. 4 to part 744);

(vii) Destination and end-use scope of § 734.9(h)(2), *i.e.,* the foreign-produced item is: destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or will be incorporated into any ''part,'' ''component,'' ''computer,'' or ''equipment'' not designated EAR99 that is destined to a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, or worldwide to an entity headquartered in, or whose ultimate parent company is headquartered in, either a destination specified in Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6; or technology developed by an entity headquartered in, or whose ultimate parent company is headquartered in, either Country Groups D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, for the ''production'' of a mask or an integrated circuit wafer or die;

(viii) Country and end-use scope of § 734.9(i)(2), *i.e.,* used in the design, ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, a ''supercomputer'' located in or destined to Macau or a destination specified in Country Group D:5; or incorporated into, or used in the ''development,'' or ''production,'' of any ''part,'' ''component,'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to Macau or a destination specified in Country Group D:5;

(ix) Destination scope of § 734.9(j)(2), *i.e.,* is destined to Iran or will be incorporated into or used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment,'' including any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor, identified in supplement no. 7 to part 746 of the EAR or is specified in any ECCN on the CCL in Categories 3 through 5 or 7 of the CCL that is located in or destined to Iran; *and*

(3) My organization affirms its commitment to comply with all applicable requirements under the EAR.

[INSERT NAME(S) OF CONSIGNEE(S) OR EXPORTER(S), REEXPORTERS), OR TRANSFERORS AS APPLICABLE].

[INSERT DATE(S) SIGNED]

Note 1 to paragraph (b): When multiple consignees engaged in a production process (or other type of collaborative activity, such as joint development) will be exporting, reexporting, transferring, or receiving items subject to the EAR, a single model certification statement for multiple consignees may be used.

(c) *Additional information.* Because this is only a model certification, parties to the transaction may add additional elements to the certification and/or use it for multiple purposes as part of their compliance program. For example, if a company has ten affiliated companies in a multi-step supply chain, instead of obtaining a model certification for each export, reexport, or transfer (in-country), the exporter, reexporter, or transferor may request all ten parties to sign the certification, if appropriate, which may further reduce the burden on parties participating in the supply chain.

PART 736—GENERAL PROHIBITIONS

■ 10. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022); Notice of May 8, 2023, 88 FR 30211 (May 10, 2023).

■ 11. Effective November 17, 2023, to January 1, 2026, supplement no. 1 to part 736 is amended by:

■ a. Revising paragraph (d) introductory text;

■ b. Adding paragraph (d)(2); and

■ c. Revising paragraphs (d)(3) and (4).

The revisions and addition read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(d) General Order No. 4. Exports, reexports, or transfers (in-country) authorized under the Temporary General Licenses (TGL) specified under paragraphs (d)(1) and (2) of this supplement must also comply with the terms and conditions under paragraphs (d)(3) through (5) of this supplement.

* * * * *

(2) *TGL—Advanced computing items.* This TGL only overcomes the license requirements described in § 742.6(a)(6)(iii) of EAR when:

(i) *Product scope.* The items subject to the EAR that are specified in ECCNs 3A001.z; 3A090; 3D001 (for ''software'' for commodities controlled by 3A001.z, 3A090); 3E001 (for ''technology'' for commodities controlled by 3A001.z, 3A090); 4A003.z; 4A004.z; 4A005.z; 4A090; 4D001 (for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 4D090; 4E001 (for ''technology'' for commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D090); 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for ''technology'' for commodities controlled by 5A002.z or 5A004.z or ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities)); or 5E992 (for ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z) of the Commerce Control List (CCL); *and*

(ii) *End-use scope.* Any item identified under the paragraph (d)(2)(i) of this supplement, may be exported, reexported, or transferred (in-country) to or within a destination specified in Country Groups D:1, D:4, or D:5 (and not specified in Country Groups A:5 or A6) when the recipient is located in but is not headquartered or whose ultimate parent company is not headquartered in Macau or Country Group D:5 to continue or engage in integration, assembly (mounting), inspection, testing, quality assurance, and distribution of items covered by items specified in paragraph (d)(2)(i) for the ultimate end use of these items outside of destinations specified in Country Groups D:1, D:4, or D:5 (and not specified in Country Groups A:5 or A6) by entities not headquartered or whose ultimate parent company is not headquartered in Macau or a destination specified in Country Group D:5.

(3) *Validity date.* The TGLs under paragraphs (d)(1) and (2) of this supplement expire on December 31, 2025.

(4) *End-use and end-user restrictions*—(i) *Restrictions related to part 744 of the EAR.* The TGL under paragraphs (d)(1) and (2) of this supplement does not overcome the license requirements of § 744.11 or § 744.21 of the EAR when an entity listed in supplements no. 4 or 7 to part 744 is a party to the transaction as described in § 748.5(c) through (f) of the EAR, or when there is knowledge of any other prohibited end use or end user (other than the § 744.23 provisions specified above in the TGL).

(ii) *Indigenous production.* (A) The TGL under paragraph (d)(1) of this supplement cannot be used for the indigenous ''development'' or ''production'' of Category 3B tools in either Macau or a destination specified in Country Group D:5, *i.e.,* where the ''part,'' ''component,'' or ''equipment'' is ''developed'' or ''produced'' at the direction of an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

(B) The TGL under paragraph (d)(2) of this supplement cannot be used for the indigenous ''development'' or ''production'' of any item identified under paragraph (d)(2)(i) of this supplement where the ''part,'' ''component,'' or ''equipment'' is ''developed'' or ''produced'' at the direction of an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5.

* * * * *

PART 740—LICENSE EXCEPTIONS

■ 12. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 13. Effective November 17, 2023, § 740.2 is amended by revising paragraphs (a)(9)(ii) introductory text and (a)(9)(ii)(B) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

* * * * *

(a) * * *

(9) * * *

(ii) The item is identified in paragraph (a)(9)(ii)(A) or (B) of this section, is being exported, reexported, or transferred (in-country) to or within a destination specified in Country Group D:1, D:4, or D:5, excluding any destination also specified in Country Groups A:5 or A:6, and the license exception is other than: TMP, restricted to eligibility under the provisions of § 740.9(a)(6); NAC, under the provisions of § 740.8; RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to a destination specified in Country Group E:1 (see supplement no. 1 to this part)); GOV, restricted to eligibility under the provisions of § 740.11(b); or TSU under the provisions of § 740.13(a) and (c). Items restricted to eligibility only for the foregoing license exceptions are:

* * * * *

(B) An integrated circuit, ''electronic assembly'' or ''component'' or related software or technology specified in ECCNs 3A001.z; 3D001 (for ''software'' for commodities controlled by 3A001.z, 3A090); 3E001 (for ''technology'' for commodities controlled by 3A001.z); 4A003.z; 4A004.z; 4A005.z; 4D001 (for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); and 4E001 (for ''technology'' for commodities controlled by 4A003.z, 4A004.z, 4A005.z); 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for ''technology'' for commodities controlled by 5A002.z or 5A004.z); ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities)); 5E992 (for ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z).

* * * * *

■ 14. Effective November 17, 2023, § 740.7 is amended by revising paragraph (b)(1) to read as follows:

§ 740.7 Computers (APP).

* * * * *

(b) * * *

(1) Related equipment controlled under ECCN 4A003.g, z.2, or z.4 may not be exported or reexported under this license exception when exported or reexported separately from eligible computers authorized under this license exception.

* * * * *

■ 15. Effective November 17, 2023, § 740.8 is added to read as follows:

§ 740.8 Notified Advanced Computing (NAC).

(a) *Eligibility requirements.* License Exception NAC permits the export, reexport, and transfer (in-country) of any item classified in ECCN 3A090, 4A090, 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z, except for items designed or marketed for use in a datacenter and meeting the parameters of 3A090.a. License Exception NAC authorizes exports, reexports, and transfers (in-country) to or within any destination specified in Country Groups D:1 or D:4, and transfers (in-country) within Macau or any destination specified in Country Group D:5, provided your export, reexport, or transfer (in-country) meets *all* of the applicable criteria identified under paragraph (b) of this section. The notification requirements do not apply for transfers (in-country). License Exception NAC also permits exports and reexports to Macau or a destination specified in Country Group D:5, or to an entity headquartered in, or with an ultimate parent headquartered in, Macau or a destination specified in

Country Group D:5, of these items, provided your export or reexport meets *all* of the applicable criteria identified under paragraphs (b) and (c) of this section, as applicable:

(1) *Written purchase order.* The export or reexport is made pursuant to a written purchase order unless specifically excepted in this section. Exports or reexports of commercial samples are not subject to this purchase order requirement, but such transactions are obligated to comply with paragraph (a)(2) of this section.

(2) *Notification to BIS.* Prior to any exports or reexports to Macau or a destination specified in Country Group D:5, the exporter or reexporter must notify BIS in accordance with the procedures set forth in paragraph (c) of this section. For multiple exports or reexports, the exporter or reexporter need only notify BIS prior to the first export or reexport. A notification under this paragraph is not required for transfers (in-country) within Macau or a destination specified in Country Group D:5. BIS will provide further information on the notification process in policy guidance.

(b) *Restrictions.* License Exception NAC may not be used for restricted activities under paragraph (b)(1) or (2) of this section.

(1) *Prohibited end uses and end users.* No exports, reexports, or transfers (in-country) may be made under License Exception NAC that are subject to a license requirement under part 744 or 746 of the EAR, except for a license required under § 744.23(a)(3) for reexports or exports to any destination other than those specified in Country Groups D:1, D:4, or D:5 (excluding any destination also specified in Country Groups A:5 or A:6) for an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5; and

(2) *'Military end use' or 'military end user.'* No exports, reexports, or transfers (in-country) may be made under License Exception NAC to or for a 'military end use,' as defined in § 744.21(f), or 'military end user,' as defined in § 744.21(g).

(c) *Prior notification procedures*—(1) *Procedures.* At least twenty-five calendar days prior to exports or reexports to or within Macau or a destination specified in Country Group D:5, you must provide prior notification under License Exception NAC by submitting a completed application in SNAP–R in accordance with § 748.1 of the EAR. The following blocks must be completed, as appropriate: Blocks 1, 2, 3, 4, 5 (by marking box 5 ''Other''), 9, 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 22(d), 23, 24, and 25 according to the instructions described in supplement no. 1 to part 748 of the EAR. Box 9 under special purpose must include NAC.

(2) *Action by BIS.* If the information provided is complete, BIS will inform you within twenty-five calendar days of notification if you may use License Exception NAC. Note that the fact that you have been advised by BIS that you can use License Exception NAC does not exempt you from other licensing requirements under the EAR, such as those based on ''knowledge'' of a prohibited end use or end user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.

(3) *Status of pending NAC notification requests.* You must log into BIS's System for Tracking Export License Applications (STELA) (*https://snapr.bis.doc.gov/stela*) for status of your pending NAC notification or to verify the status in BIS's Simplified Network Applications Processing Redesign (SNAP–R) System. STELA will provide the date the NAC notification is registered. STELA will, on the twenty-fifth calendar day following the date of registration, provide a confirmation of the fact that you can use License Exception NAC and a NAC confirmation number to be submitted in AES or provide you with confirmation if you cannot use License Exception NAC. In addition, BIS may provide such confirmation by email, telephone, fax, courier service, or other means.

■ 16. Effective November 17, 2023, § 740.16 is amended by revising paragraphs (a)(2) and (b)(2)(ii) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons; described in ECCNs 0A919, 3A001.b.2, b.3 (except those that are being reexported for use in civil telecommunications applications), or .z, 6A002, or 6A003; or commodities classified under a 0x5zz ECCN; and

* * * * *

(b) * * *

(2) * * *

(ii) Commodities in 3A001.b.2, b.3 (except those that are being reexported for use in civil telecommunications applications), or .z;

* * * * *

■ 17. Effective November 17, 2023, § 740.17 is amended by revising the fifth sentence of the introductory text and revising paragraphs (b)(1), (b)(2)(i)(D), the note to paragraph (b)(2), paragraphs (b)(3) introductory text (retaining note), (b)(3)(i) introductory text, (b)(3)(iii)(B), and (b)(3)(iv), the second sentence of paragraph (e)(3) introductory text, and revising paragraph (f)(1) to read as follows:

§ 740.17 Encryption Commodities, Software and Technology (ENC).

* * * Items described in paragraphs (b)(1) and (b)(3)(i), (b)(3)(ii) or (b)(3)(iv) of this section that meet the criteria set forth in Note 3 to Category 5—Part 2 of the Commerce Control List (the ''mass market'' note) are classified under ECCN 5A992 or 5D992 following self-classification or classification by BIS and are no longer subject to ''EI'' and ''NS'' controls. * * *

* * * * *

(b) * * *

(1) *Immediate authorization.* This paragraph (b)(1) authorizes the exports, reexports, and transfers (in-country) of the associated commodities self-classified under ECCNs 5A002.a, z.1, or 5B002, and equivalent or related software therefor classified under 5D002, except any such commodities, software, or components described in paragraph (b)(2) or (3) of this section, subject to submission of a self-classification report in accordance with § 740.17(e)(3) of the EAR. Items described in this paragraph (b)(1) that meet the criteria set forth in Note 3 to Category 5—Part 2 of the Commerce Control List (the ''mass market'' note) are classified as ECCN 5A992 or 5D992 following self-classification or classification by BIS and are removed from ''EI'' and ''NS'' controls.

(2) * * *

(i) * * *

(D) *Quantum cryptography.* ECCN 5A002.c, z.3, or 5D002 ''quantum cryptography'' commodities or software;

* * * * *

Note to paragraph (b)(2): Commodities, components, and software classified under ECCNs 5A002.b, z.2, or 5D002.b or z.5, for the ''cryptographic activation'' of commodities or software specified by paragraph (b)(2) of this section are also controlled under paragraph (b)(2) of this section.

(3) *Classification request required for specified commodities, software, and components.* Thirty (30) days after a classification request is submitted to BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, this paragraph authorizes exports, reexports, and transfers (in-country) of the items submitted for

classification, as further described in this paragraph (b)(3), to any end user, provided the item does not perform the functions, or otherwise meet the specifications, of any item described in paragraph (b)(2) of this section. Items described in paragraph (b)(3)(ii) or (iv) of this section that meet the criteria set forth in Note 3 to Category 5—Part 2 of the CCL (the ''mass market'' note) are classified under ECCN 5A992 or 5D992 following classification by BIS.

* * * * *

(i) *Non-''mass market'' ''components,'' toolsets, and toolkits.* Specified components classified under ECCN 5A002.a, or z.1, and equivalent or related software classified under ECCN 5D002 that do not meet the criteria set forth in Note 3 to Category 5—Part 2 of the CCL (the ''mass market'' note) and are not described by paragraph (b)(2) or (b)(3)(ii) of this section, as follows:

* * * * *

(iii) * * *

(B) *Digital forensics and investigative tools.* Items specified in ECCNs: 5A004.b, z.3; 5D002.a.3.b or z.4; or 5D002.c.3.b or z.9 in supplement no. 1 to part 774 of the EAR.

(iv) ''*Cryptographic activation'' commodities, components, and software.* Commodities, components, and software classified under ECCNs 5A002.b, z.2, or 5D002.b or z.5, where the product or cryptographic functionality is not otherwise described in paragraph (b)(2) or (b)(3)(i) of this section.

* * * * *

(e) * * *

(3) * * * Specifically, this reporting requirement applies to ''mass market'' encryption components and 'executable software' that meet the criteria of the Cryptography Note—Note 3 to Category 5—Part 2 of the CCL (''mass market'' note) and are classified under ECCN 5A992 or 5D992 following self-classification, as well as to non-''mass market'' encryption commodities and software that remain classified in ECCN 5A002, 5B002, or 5D002 following self-classification, provided these items are not further described by paragraph (b)(2) or (3) of this section.

* * * * *

(f) * * *

(1) ''Cryptanalytic items,'' classified in ECCN 5A004.a, z.1 or z.2, 5D002.a.3.a, c.3.a, z.3, or z.8, or 5E002;

* * * * *

■ 18. Effective November 17, 2023, § 740.19 is amended by revising paragraphs (b) introductory text and (b)(16) and adding paragraph (b)(17) to read as follows:

§ 740.19 Consumer communications devices (CCD).

* * * * *

(b) *Eligible commodities and software.* Commodities and ''software'' in paragraphs (b)(1) through (17) of this section are eligible for export, reexport, or transfer (in-country) under this section to and within Cuba, Russia, and Belarus.

* * * * *

(16) Consumer ''software'' (except ''encryption source code'') classified under ECCNs 4D994, 5D991 or 5D992.c or designated EAR99 to be used for equipment described in paragraphs (b)(1) through (17) of this section; and

(17) Commodities described under 3A991.p or 4A994.l.

* * * * *

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 19. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 20. Effective November 17, 2023, § 742.6 is amended by revising paragraphs (a)(6) and (b)(10) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(6) *RS requirement that applies to advanced computing and semiconductor manufacturing items*—(i) *Exports, reexports, transfers (in-country) to or within Macau or Country Group D:5.* A license is required for items specified in ECCNs 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c; and associated software and technology in 3D001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c), 3D002 (for 3B001a.4, c, d, f.1.b, k to p, 3B002.b and c), and 3E001 (for 3B001a.4, c, d, f.1.b, k to p, 3B002.b and c) being exported, reexported, or transferred (in-country) to or within Macau or a destination specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR.

(ii) *Exports from abroad originating in either Macau or a destination specified in Country Group D:5.* A license is also required for the export from abroad originating in either Macau or a destination specified in Country Group D:5 to any destination worldwide excluding any destination also specified in Country Groups A:5 or A:6, of 3E001 (for 3A090) technology developed by an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 that is the direct product of software subject to the EAR and is for the ''production'' of commodities identified in ECCNs 3A090, 4A090, 3A001.z, 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, or 5A992.z, consistent with § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR.

(iii) *Exports, reexports, transfers (in-country) to or within destinations specified in Country Groups D:1, D:4, and D:5, excluding destinations also specified in Country Groups A:5 or A:6.* A license is required for items specified in ECCNs 3A001.z; 3A090; 3D001 (for ''software'' for commodities controlled by 3A001.z, 3A090); 3E001 (for ''technology'' for commodities controlled by 3A001.z, 3A090); 4A003.z; 4A004.z; 4A005.z; 4A090; 4D001 (for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z); 4D090 (for ''software'' for commodities controlled by 4A090); 4E001 (for ''technology'' for commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D090 (for ''software'' for commodities controlled by 4A090)); 5A002.z; 5A004.z; 5A992.z; 5D002.z; 5D992.z; 5E002 (for ''technology'' for commodities controlled by 5A002.z or 5A004.z or ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities)); or 5E992 (for ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z) being exported, reexported, or transferred (in-country) to or within a destination specified in Country Groups D:1, D:4, and D:5, excluding destinations also specified in Country Groups A:5 or A:6, in supplement no. 1 to part 740 of the EAR.

(iv) *Deemed exports and reexports.* The license requirements in paragraphs (a)(6)(i) through (iii) of this section do not apply to deemed exports or deemed reexports.

* * * * *

(b) * * *

(10) *Advanced computing and semiconductor manufacturing items*—(i) *License review policy for paragraphs (a)(6)(i) and (ii) of this section.* License applications for items specified in

paragraphs (a)(6)(i) and (ii) of this section will be reviewed consistent with license review policies in § 744.23(d) of the EAR, except applications will be reviewed on a case-by-case basis if no license would be required under part 744 of the EAR.

(ii) *License review policy for paragraph (a)(6)(iii) of this section.* License applications for items specified in paragraph (a)(6)(iii) of this section to or within destinations not specified in Country Group D:5 (except Macau) will be reviewed on a presumption of approval basis, unless the export, reexport, or transfer (in-country) is to an entity headquartered in, whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, in which case license applications will be reviewed under a presumption of denial. License applications for items to or within Macau or destinations specified in Country Group D:5 for items specified in paragraph (a)(6)(iii) will be reviewed under a presumption of denial.

* * * * *

■ 21. Effective November 17, 2023, § 742.15 is amended by revising the third, fourth, and fifth sentences of paragraph (a)(1) to read as follows:

§ 742.15 Encryption items.

* * * * *

(a) * * *

(1) * * * Following classification or self-classification, items that meet the criteria of Note 3 to Category 5—Part 2 of the Commerce Control List (the ''mass market'' note), are classified under ECCN 5A992 or 5D992 and are no longer subject to this Section (see § 740.17 of the EAR). Before submitting a license application, please review License Exception ENC to determine whether this license exception is available for your item or transaction. For exports, reexports, or transfers (in-country) of encryption items that are not eligible for a license exception, you must submit an application to obtain authorization under a license or an Encryption Licensing Arrangement.

* * * * *

PART 744—CONTROL POLICY: END–USER AND END–USE BASED

■ 22. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

■ 23. Effective November 17, 2023, § 744.6 is amended by revising paragraphs (c)(2)(i) and (ii) and adding paragraphs (c)(3) and (d)(1) to read as follows:

§ 744.6 Restrictions on specific activities of ''U.S. persons.''

* * * * *

(c) * * *

(2) * * *

(i) ''*Development*'' *or* ''*production*'' *of* ''*advanced-node ICs.*'' To or within Macau or a destination specified in Country Group D:5, any item not subject to the EAR that you know will be used in the ''development'' or ''production'' of integrated circuits at a ''facility'' of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 where ''production'' of ''advanced-node integrated circuits'' occurs;

(ii) *Category 3 items for* ''*development*'' *or* ''*production*'' *of* ''*advanced-node ICs.*'' To or within Macau or a destination specified in Country Group D:5, any item not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the CCL that you know will be used in the ''development'' or ''production'' of integrated circuits at a ''facility'' of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 where ''production'' of integrated circuits occurs, but you do not know whether ''production'' of ''advanced-node integrated circuits'' occurs at such ''facility'';

* * * * *

(3) *Scope of activities of* ''*U.S. persons*'' *that require a license under paragraph (c)(2) of this section.* (i) *Controlled activities.* The U.S. persons controls in paragraphs (c)(2)(i) through (iii) of this section apply to persons who:

(A) Authorize the shipment, transmittal, or transfer (in-country) of items not subject to the EAR and described in paragraphs (c)(2)(i) through (iii) of this section;

(B) Conduct the delivery, by shipment, transmittal, or transfer (in-country), of items not subject to the EAR described in paragraphs (c)(2)(i) through (iii) of this section; or

(C) Service, including maintaining, repairing, overhauling, or refurbishing items not subject to the EAR described in paragraphs (c)(2)(i) through (iii) of this section.

(ii) *Due diligence.* Appropriate due diligence includes but is not limited to review of publicly available information, capability of items to be provided, proprietary market data, and end-use statements. ''U.S. persons'' should conduct due diligence to assess whether the item is for the ''development'' or ''production'' of ''advanced-node integrated circuits'' at a ''facility'' of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, consistent with paragraphs (c)(2)(i) through (iii) of this section. As set forth in paragraph (c)(2)(ii), for items specified in Category 3B, 3C, 3D, or 3E ECCNs, license requirements may apply even when the ''U.S. person'' does not know whether the activity is for the ''development'' or ''production'' of ''advanced-node integrated circuits.'' In addition, some of the exclusions may require due diligence, such as those in paragraphs (d)(3) and (5) of this section. ''U.S. persons'' should follow the ''Know Your Customer'' guidance in supplement no. 3 to part 732 of the EAR. ''U.S. persons'' can also submit Advisory Opinion requests to BIS pursuant to § 748.3(c) of the EAR for guidance on specific fabrication facilities. To submit an Advisory Opinion request, email *RPD2@bis.doc.gov.*

(d) * * *

(1) *Exclusion of certain administrative and clerical activities and information otherwise excluded*—(i) *Exclusion of certain administrative and clerical activities.* Given the policy objective of these controls, the ''U.S. persons'' criteria in paragraphs (c)(2)(i) through (iii) of this section do not extend to ''U.S. persons'' conducting administrative or clerical activities (*e.g.,* arranging for shipment or preparing financial documents) or otherwise implementing a decision to approve a restricted shipment, transmittal, or in-country transfer, or to activities of ''U.S. persons'' that are not directly related to the provision or servicing of specific items to the ''development'' or ''production'' of ''advanced-node integrated circuits.''

(ii) *Exclusion of information otherwise excluded under the EAR under part 734.* The exclusion of certain activities specified in paragraph (c)(3) of this section only applies to paragraph (c)(2) of this section, and does not, for example, limit the scope of paragraph

(b) of this section or apply to other uses of the term facilitate or facilitation found elsewhere in the EAR. The scope of paragraph (c)(2) of this section does not include information or software that would otherwise be excluded from the EAR based on the exclusion criteria under part 734, *e.g.,* under § 734.7 (entitled ''Published'') Tand § 734.8 ''Technology'' or ''software'' that arises during, or results from, fundamental research.

(iii) *Exclusion of law enforcement and intelligence operations of the U.S. Government.* Given the policy objective of these controls, the ''U.S. persons'' criteria in paragraphs (c)(2)(i) through (iii) of this section do not extend to ''U.S. persons'' conducting law enforcement and intelligence operations of the U.S. Government.

* * * * *

■ 24. Effective November 17, 2023, § 744.23 is amended by revising paragraphs (a)(1)(ii) and (a)(2) and adding paragraph (a)(3) to read as follows:

§ 744.23 ''Supercomputer'' and semiconductor manufacturing end use.

* * * * *

(a) * * *

(1) * * *

(ii) *Destination and end-use scope.* (A) The ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a ''supercomputer'' located in or destined to Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR; or

(B) The incorporation into, or the ''development'' or ''production'' of any ''component'' or ''equipment'' that will be used in a ''supercomputer'' located in or destined to Macau or a destination specified in Country Group D:5.

(2) ''*Advanced-node ICs*''—(i) *Any item at a* ''*production*'' ''*facility*'' *of* ''*advanced-node ICs.*'' Any items subject to the EAR when you know the items will be used in the ''development'' or ''production'' of ICs destined to a ''facility'' located in Macau or a destination specified in Country Group D:5 where ''production'' of ''advanced-node ICs'' occurs.

(ii) *Category 3 items to a* ''*facility*'' *where the technology node is unknown.* Any item subject to the EAR specified in an ECCN in Product Groups B, C, D, or E in Category 3 of the CCL when you know the item will be used in the ''development'' or ''production'' of ICs destined to a ''facility'' located in Macau or a destination specified in Country Group D:5 where ''production'' of integrated circuits occurs, but you do not know whether ''production'' of ''advanced-node ICs'' occurs at such ''facility.''

(3) *Advanced computing items.* (i) Any item subject to the EAR and specified in ECCN 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z destined to any destination other than those specified in Country Groups D:1, D:4, or D:5 (excluding any destination also specified in Country Groups A:5 or A:6) for an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 (*e.g.,* a PRC-headquartered cloud or data server provider located in a destination not otherwise excluded).

(ii) ECCN 3E001 (for 3A090) ''technology'' when it meets all of the following:

(A) The technology is developed by an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5;

(B) The ''technology'' is subject to the EAR pursuant to the foreign direct product rule in § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR;

(C) The ''technology'' is for reexport or transfer (in-country) from or within a destination specified in Country Group D:1, D:4, D:5, excluding any destination also specified in Country Groups A:5 or A:6, to any destination worldwide; and

(D) The ''technology'' is for the ''production'' of commodities or software specified in ECCN 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, or 5A992.z.

Note 1 to paragraph (a)(3)(ii): This paragraph (a)(3)(ii) includes items subject to the EAR pursuant to the foreign direct product rule in § 734.9(h)(1)(i)(B)(*1*) and (h)(2)(ii) of the EAR.

* * * * *

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 25. Effective November 17, 2023, the authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 810, 2023, 88 FR 30211 (May 10, 2023).

■ 26. Effective November 17, 2023, § 746.8 is amended by revising paragraph (a) introductory text to read as follows:

§ 746.8 Sanctions against Russia and Belarus.

(a) *License requirements.* For purposes of paragraphs (a)(1) and (2) of this section, commodities specified under ECCN 5A991, and commodities and software classified under ECCNs 5A992.c or 5D992.c that have been 'classified in accordance with § 740.17' do not require a license to or within Russia or Belarus for the following civil end-users: wholly-owned U.S. subsidiaries, branches, or sales offices; joint ventures between two or more U.S. companies, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures; joint ventures between U.S. companies and companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures; wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740; or joint ventures between two or more companies headquartered in Country Group A:5 and A:6 in supplement no. 1 to part 740, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures.

* * * * *

■ 27. Effective November 17, 2023, § 746.10 is amended by revising paragraph (a) introductory text to read as follows:

§ 746.10 'Luxury Goods' Sanctions Against Russia and Belarus and Russian and Belarusian oligarchs and malign actors.

(a) *License requirements.* For purposes of paragraphs (a)(1) and (2) of this section, commodities specified under ECCN 5A991, and commodities and software classified under ECCNs 5A992.c or 5D992.c that have been 'classified in accordance with § 740.17' do not require a license to or within Russia or Belarus for the following civil end-users: wholly-owned U.S. subsidiaries, branches, or sales offices; joint ventures between two or more U.S. companies, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures; joint ventures between U.S. companies and companies headquartered in countries from Country Group A:5 and A:6 in

supplement no. 1 to part 740 of the EAR, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures; wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740; or joint ventures between two or more companies headquartered in Country Group A:5 and A:6 in supplement no. 1 to part 740, including the wholly-owned subsidiaries, branches, or sales offices of such joint ventures.

* * * * *

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 28. Effective November 17, 2023, the authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2023, 88 FR 55549 (August 16, 2023).

■ 29. Effective November 17, 2023, § 748.8 is amended by adding paragraphs (d), (s), (t), and (z) to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(d) U.S. person support activities that require a license under § 744.6.

* * * * *

(s) Exports of firearms and certain shotguns temporarily in the United States.

(t) ''600 Series Major Defense Equipment.''

* * * * *

(z) Semiautomatic firearms controlled under ECCN 0A501.a.

■ 30. Effective November 17, 2023, supplement No. 2 to part 748 is amended by adding paragraph (d) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(d) *''U.S. person'' support activities that require a license under § 744.6 of the EAR.* Use SNAP–R for submitting a license application for ''U.S. person'' activities. Applicants should use the reexport designation on the SNAP–R form and include in the ''Additional Information'' section of the license application that a license is required for the transaction under § 744.6 of the EAR. In the special purpose field, specify the specific activities the ''U.S. person'' is engaged. The applicant should provide, as relevant: the ECCN of the technology or item or, if unknown, use the EAR99 designation (regardless of whether the items being dealt with are subject to the EAR); and a complete explanation of the activity in supplemental documentation.

* * * * *

■ 31. Effective November 17, 2023, supplement no. 7 to part 748 is amended by revising the heading and the entries for ''Advanced Micro Devices China, Inc'' and ''Shanghai Huahong Grace Semiconductor Manufacturing Corporation'' under ''China (People's Republic of)'' to read as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer (In-Country), and Eligible Destinations

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register**
*	*	* *	* *	*
China (People's Republic of).	Advanced Micro Devices China, Inc.	3D002, 3D003, 3E001 (limited to ''technology'' for items classified under 3C002 and 3C004 and ''technology'' for use during the International Technology Roadmap for Semiconductors (ITRS) process for items classified under ECCNs 3B001 and 3B002), 3E002 (limited to ''technology'' for use during the ITRS process for items classified under ECCNs 3B001 and 3B002), 3E003.e (limited to the ''development'' and ''production'' of integrated circuits for commercial applications), 4D001 and 4E001 (limited to the ''development'' of products under ECCN 4A003.b through .g).	Advanced Micro Devices (Shanghai) Co., Ltd., Buildings 33 (Unit 1), 46, 47, 48 & 49, River Front Harbor, Zhangjiang Hi-Tech Park, No. 1387 Zhang Dong Road, Pudong District, Shanghai, China 201203. AMD Technology Development (Beijing) Co., Ltd., North and South Buildings, RaycomInfotech, Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190. AMD Products (China) Co. Ltd., North and South Buildings, RaycomInfotech Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190.	75 FR 25763, 5/10/10. 76 FR 2802, 1/18/11. 78 FR 3319, 1/16/13. 81 FR 40785, 6/23/16. 88 FR [INSERT PAGE NUMBER], 10/25/23.
	*	* *	* *	*
	Shanghai Huahong Grace Semiconductor Manufacturing Corporation.	1C350.c.4, 1C350.d.14, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.4, 3B001.a.1, 3B001.b, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 5B002, and 5E002 (controlled by ECCNs 5A002.a through .e, 5A004.a through .b, or 5A992.c that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) of the EAR).	Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 2, 668 Guoshoujing Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China. Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 1, 1188 Chuanqiao Road, Pudong, Shanghai 201206 China.	78 FR 32981, 6/3/13. 88 FR [INSERT PAGE NUMBER], 10/25/23.

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal Register
			Shanghai Huahong Grace Semiconductor Manufacturing Corporation—GFab1, 1399 Zuchongzhi Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China.	
*	*	*	*	*
*	*	*	*	*

PART 758—EXPORT CLEARANCE REQUIREMENTS

■ 32. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 33. Effective November 17, 2023, § 758.1 is amended by adding paragraph (g)(5) to read as follows:

§ 758.1 The Electronic Export Information (EEI) Filing to the Automated Export System (AES).

* * * * *

(g) * * *

(5) *Exports of .z items that meet or exceed the performance parameters of ECCN 3A090 or 4A090.* This paragraph (g)(5) imposes a requirement for identifying .z items by ''items'' level classification in the EEI filing in AES. For any export of .z items controlled under ECCNs 3A001, 4A003, 4A004, 4A005, 5A002, 5A004, 5A992, 5D002, or 5D992 in addition to any other required data for the associated EEI filing, you must include the items paragraph classification (*i.e.,* .z), when applicable, as the first text to appear in the Commodity description block in the EEI filing in AES.

* * * * *

■ 34. Effective November 17, 2023, § 758.6 is amended by revising paragraph (a)(2) to read as follows:

§ 758.6 Destination control statement and other information furnished to consignees.

(a) * * *

(2) The ECCN(s) for any 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 9x515 or ''600 series'' ''items'' being shipped (*i.e.,* exported in tangible form). For the seven ECCNs with a .z paragraph, the requirement to include the classification only applies to commodities classified under the .z paragraphs. If the commodity is classified under any other paragraph in one of those seven ECCNs, then the requirement under this paragraph is not applicable. For ECCN 3A090, identify the commodity as either 3A090.a or .b.

* * * * *

PART 772—DEFINITIONS OF TERMS

■ 35. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 36. Effective November 17, 2023, § 772.1 is amended by revising the last sentence in note 1 to the definition for ''specially designed'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Specially designed. * * *

NOTE 1: * * * For purposes of ''specially designed,'' ECCNs 0B505.c, 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999, 3A991, 4A994, 5A992 (except for .z), 5D992 (except for .z), 6A998 (except for .b), and 9A991 are treated as ECCNs controlled exclusively for AT reasons.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 37. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 38. Effective November 17, 2023, supplement no. 1 to part 774 is amended by:

■ a. Revising ECCNs 3A001, 3A090, 3A991, 3D001, 3E001;

■ b. Revising Note 3 to Category 4—Computers;

■ c. Revising ECCNs 4A003, 4A004, 4A005, 4A090, 4A994, 4D001, and 4E001;

■ d. Revising Technical Note paragraph 2 in the TECHNICAL NOTE ON ''ADJUSTED PEAK PERFORMANCE'' (''APP'') at the end Category 4—Computers;

■ e. Revising the Note 3. to Category 5—Telecommunications and ''Information Security'' Part 1—Telecommunications introductory text;

■ f. Revising ECCN 5E001;

■ g. Revising Note 3 and the N/B. to Note 3 (Cryptography Note) to Category 5—Telecommunications and ''Information Security'' Part 2—''Information Security''; and

■ h. Revising ECCNs 5A002, 5A992, 5A004, 5B002, 5D002, 5D992, 5E002, 5E992, 9A004, and 9A515.

The revisions read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3A001 Electronic items as follows (see List of Items Controlled).

Reason for Control: NS, RS, MT, NP, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	NS Column 1.
NS applies to entire entry, except 3A001.z.	NS Column 2.

Control(s)	*Country chart (see supp. No. 1 to part 738)*
RS applies ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications.	RS Column 1.
RS applies to 3A001.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
MT applies to 3A001.a.1.a and .z when usable in ''missiles''; and to 3A001.a.5.a and .z when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C.	MT Column 1.
NP applies to pulse discharge capacitors in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively.	NP Column 1.
AT applies to entire entry.	AT Column 1.

Reporting Requirements: *See § 743.1 of the EAR for reporting requirements for exports under 3A001.b.2 or b.3 under License Exceptions, and Validated End-User authorizations.*

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A for MT, NP or 3A001.z; N/A for ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications.
Yes for:
$1500: 3A001.c
$3000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g.
$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), .b.4 to b.7, and b.12.

GBS: Yes for 3A001.a.1.b, a.2 to a.14 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for ''vacuum electronic devices'' exceeding 18 GHz), b.9., b.10, .g, and .h, and .i.

NAC: Yes, for 3A001.z; N/A for all other 3A001 commodities.

Special Conditions for STA

STA: License Exception STA may not be used to ship any item in 3A001.b.2 or b.3, except those that are being exported or reexported for use in civil telecommunications applications, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) See Category XV of the USML for certain ''space-qualified'' electronics and Category XI of the USML for certain ASICs, 'transmit/receive modules,' or 'transmit modules' ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 3A090 (including Note 4 to 3A090), 3A101, 3A201, 3A611, 3A991, and 9A515.

Related Definitions: 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit. For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si) = 5×10^5 Rads (Si); 5×10^6 Gy (Si)/s = 5×10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: *Integrated circuits include the following types:*

—*''Monolithic integrated circuits'';*
—*''Hybrid integrated circuits'';*
—*''Multichip integrated circuits'';*
—*Film type integrated circuits, including silicon-on-sapphire integrated circuits'';*
—*''Optical integrated circuits'';*
—*''Three dimensional integrated circuits'';*
—*''Monolithic Microwave Integrated Circuits'' (''MMICs'').*

a.1. Integrated circuits designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

Note: *3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).*

a.2. ''Microprocessor microcircuits,'' ''microcomputer microcircuits,'' microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, integrated circuits that contain analog-to-digital converters and store or process the digitized data, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, Static Random-Access Memories (SRAMs), or 'non-volatile memories,' having any of the following:

Technical Note: *For the purposes of 3A001.a.2, 'non-volatile memories' are memories with data retention over a period of time after a power shutdown.*

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (+125 °C);

Note: *3A001.a.2 does not apply to integrated circuits designed for civil automobile or railway train applications.*

a.3. ''Microprocessor microcircuits'', ''microcomputer microcircuits'' and microcontroller microcircuits, manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz;

Note: *3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.*

a.4. [Reserved]

a.5. Analog-to-Digital Converter (ADC) and Digital-to-Analog Converter (DAC) integrated circuits, as follows:

a.5.a. ADCs having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 10 bit, with a ''sample rate'' greater than 1.3 Giga Samples Per Second (GSPS);

a.5.a.2. A resolution of 10 bit or more, but less than 12 bit, with a ''sample rate'' greater than 600 Mega Samples Per Second (MSPS);

a.5.a.3. A resolution of 12 bit or more, but less than 14 bit, with a ''sample rate'' greater than 400 MSPS;

a.5.a.4. A resolution of 14 bit or more, but less than 16 bit, with a ''sample rate'' greater than 250 MSPS; *or*

a.5.a.5. A resolution of 16 bit or more with a ''sample rate'' greater than 65 MSPS;

N.B.: *For integrated circuits that contain analog-to-digital converters and store or process the digitized data see 3A001.a.14.*

Technical Notes: *For the purposes of 3A001.a.5.a:*

1. *A resolution of n bit corresponds to a quantization of 2^n levels.*

2. *The resolution of the ADC is the number of bits of the digital output that represents the measured analog input. Effective Number of Bits (ENOB) is not used to determine the resolution of the ADC.*

3. *For ''multiple channel ADCs'', the ''sample rate'' is not aggregated and the ''sample rate'' is the maximum rate of any single channel.*

4. *For ''interleaved ADCs'' or for ''multiple channel ADCs'' that are specified to have an interleaved mode of operation, the ''sample rates'' are aggregated and the ''sample rate'' is the maximum combined total rate of all of the interleaved channels.*

a.5.b. Digital-to-Analog Converters (DAC) having any of the following:

a.5.b.1. A resolution of 10-bit or more but less than 12-bit, with an 'adjusted update rate' of exceeding 3,500 MSPS; *or*

a.5.b.2. A resolution of 12-bit or more and having any of the following:

a.5.b.2.a. An 'adjusted update rate' exceeding 1,250 MSPS but not exceeding 3,500 MSPS, and having any of the following:

a.5.b.2.a.1. A settling time less than 9 ns to arrive at or within 0.024% of full scale from a full scale step; *or*

a.5.b.2.a.2. A 'Spurious Free Dynamic Range' (SFDR) greater than 68 dBc (carrier) when synthesizing a full scale analog signal of 100 MHz or the highest full scale analog signal frequency specified below 100 MHz; *or*

a.5.b.2.b. An 'adjusted update rate' exceeding 3,500 MSPS;

Technical Notes: *For the purposes of 3A001.a.5.b:*

1. *'Spurious Free Dynamic Range' (SFDR) is defined as the ratio of the RMS value of the carrier frequency (maximum signal component) at the input of the DAC to the RMS value of the next largest noise or harmonic distortion component at its output.*

2. *SFDR is determined directly from the specification table or from the characterization plots of SFDR versus frequency.*

3. *A signal is defined to be full scale when its amplitude is greater than –3 dBfs (full scale).*

4. *'Adjusted update rate' for DACs is:*

a. *For conventional (non-interpolating) DACs, the 'adjusted update rate' is the rate at which the digital signal is converted to an analog signal and the output analog values are changed by the DAC. For DACs where the interpolation mode may be bypassed (interpolation factor of one), the DAC should be considered as a conventional (non-interpolating) DAC.*

b. *For interpolating DACs (oversampling DACs), the 'adjusted update rate' is defined as the DAC update rate divided by the smallest interpolating factor. For interpolating DACs, the 'adjusted update rate' may be referred to by different terms including:*

- input data rate
- input word rate
- input sample rate
- maximum total input bus rate
- maximum DAC clock rate for DAC clock input.

a.6. Electro-optical and ''optical integrated circuits'', designed for ''signal processing'' and having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. 'Field programmable logic devices' having any of the following:

a.7.a. A maximum number of single-ended digital input/outputs of greater than 700; *or*

a.7.b. An 'aggregate one-way peak serial transceiver data rate' of 500 Gb/s or greater;

Note: *3A001.a.7 includes:*

—Complex Programmable Logic Devices (CPLDs);
—Field Programmable Gate Arrays (FPGAs);
—Field Programmable Logic Arrays (FPLAs);
—Field Programmable Interconnects (FPICs).

N.B.: *For integrated circuits having field programmable logic devices that are combined with an analog-to-digital converter, see 3A001.a.14.*

Technical Notes: *For the purposes of 3A001.a.7:*

1. *Maximum number of digital input/outputs in 3A001.a.7.a is also referred to as maximum user input/outputs or maximum available input/outputs, whether the integrated circuit is packaged or bare die.*

2. *'Aggregate one-way peak serial transceiver data rate' is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.*

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,500 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.02 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

Technical Note: *For the purposes of 3A001.a.12, when N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500* µs.

a.13. Direct Digital Synthesizer (DDS) integrated circuits having any of the following:

a.13.a. A Digital-to-Analog Converter (DAC) clock frequency of 3.5 GHz or more and a DAC resolution of 10 bit or more, but less than 12 bit; *or*

a.13.b. A DAC clock frequency of 1.25 GHz or more and a DAC resolution of 12 bit or more;

Technical Note: *For the purposes of 3A001.a.13, the DAC clock frequency may be specified as the master clock frequency or the input clock frequency.*

a.14. Integrated circuits that perform or are programmable to perform all of the following:

a.14.a. Analog-to-digital conversions meeting any of the following:

a.14.a.1. A resolution of 8 bit or more, but less than 10 bit, with a ''sample rate'' greater than 1.3 Giga Samples Per Second (GSPS);

a.14.a.2. A resolution of 10 bit or more, but less than 12 bit, with a ''sample rate'' greater than 1.0 GSPS;

a.14.a.3. A resolution of 12 bit or more, but less than 14 bit, with a ''sample rate'' greater than 1.0 GSPS;

a.14.a.4. A resolution of 14 bit or more, but less than 16 bit, with a ''sample rate'' greater than 400 Mega Samples Per Second (MSPS); *or*

a.14.a.5. A resolution of 16 bit or more with a ''sample rate'' greater than 180 MSPS; *and*

a.14.b. Any of the following:

a.14.b.1. Storage of digitized data; *or*

a.14.b.2. Processing of digitized data;

N.B. 1: *For analog-to-digital converter integrated circuits see 3A001.a.5.a.*

N.B. 2: *For field programmable logic devices see 3A001.a.7.*

Technical Notes: *For the purposes of 3A001.a.14:*

1. *A resolution of n bit corresponds to a quantization of 2^n levels.*

2. *The resolution of the ADC is the number of bits of the digital output of the ADC that represents the measured analog input. Effective Number of Bits (ENOB) is not used to determine the resolution of the ADC.*

3. *For integrated circuits with non-interleaving ''multiple channel ADCs'', the ''sample rate'' is not aggregated and the ''sample rate'' is the maximum rate of any single channel.*

4. *For integrated circuits with ''interleaved ADCs'' or with ''multiple channel ADCs'' that are specified to have an interleaved mode of operation, the ''sample rates'' are aggregated and the ''sample rate'' is the maximum combined total rate of all of the interleaved channels.*

b. Microwave or millimeter wave items, as follows:

Technical Note: *For purposes of 3A001.b, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

b.1. ''Vacuum electronic devices'' and cathodes, as follows:

Note 1: *3A001.b.1 does not control ''vacuum electronic devices'' designed or rated for operation in any frequency band and having all of the following:*

a. *Does not exceed 31.8 GHz; and*

b. *Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.*

Note 2: *3A001.b.1 does not control non-''space-qualified'' ''vacuum electronic devices'' having all the following:*

a. *An average output power equal to or less than 50 W; and*

b. *Designed or rated for operation in any frequency band and having all of the following:*

1. *Exceeds 31.8 GHz but does not exceed 43.5 GHz; and*

2. *Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.*

b.1.a. Traveling-wave ''vacuum electronic devices,'' pulsed or continuous wave, as follows:

b.1.a.1. Devices operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Devices having a cathode heater with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity devices, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Devices based on helix, folded waveguide, or serpentine waveguide circuits, or derivatives thereof, having any of the following:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1;

b.1.a.4.c. Being ''space-qualified''; *or*

b.1.a.4.d. Having a gridded electron gun;

b.1.a.5. Devices with a ''fractional bandwidth'' greater than or equal to 10%, with any of the following:

b.1.a.5.a. An annular electron beam;

b.1.a.5.b. A non-axisymmetric electron beam; *or*

b.1.a.5.c. Multiple electron beams;

b.1.b. Crossed-field amplifier ''vacuum electronic devices'' with a gain of more than 17 dB;

b.1.c. Thermionic cathodes, designed for ''vacuum electronic devices,'' producing an emission current density at rated operating conditions exceeding 5 A/cm^2 or a pulsed (non-continuous) current density at rated operating conditions exceeding 10 A/cm^2;

b.1.d. ''Vacuum electronic devices'' with the capability to operate in a 'dual mode.'

Technical Note: *For the purposes of 3A001.b.1.d, 'dual mode' means the ''vacuum electronic device'' beam current can be intentionally changed between continuous-wave and pulsed mode operation by use of a grid and produces a peak pulse output power greater than the continuous-wave output power.*

b.2. ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are any of the following:

N.B.: *For ''MMIC'' amplifiers that have an integrated phase shifter see 3A001.b.12.*

b.2.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.2.a.1. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.2.a.2. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.2.a.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.2.a.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.2.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.2.b.1. A peak saturated power output greater than 10 W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; *or*

b.2.b.2. A peak saturated power output greater than 5 W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

b.2.c. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.d. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.2.e. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.f. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.g. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.2.h. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

Note 1: *[Reserved]*

Note 2: *The control status of the ''MMIC'' whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.2.a through 3A001.b.2.h, is determined by the lowest peak saturated power output control threshold.*

Note 3: *Notes 1 and 2 following the Category 3 heading for product group A. Systems, Equipment, and Components mean that 3A001.b.2 does not control ''MMICs'' if they are ''specially designed'' for other applications, e.g., telecommunications, radar, automobiles.*

b.3. Discrete microwave transistors that are any of the following:

b.3.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz and having any of the following:

b.3.a.1. A peak saturated power output greater than 400 W (56 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.3.a.2. A peak saturated power output greater than 205 W (53.12 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.3.a.3. A peak saturated power output greater than 115 W (50.61 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.3.a.4. A peak saturated power output greater than 60 W (47.78 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.3.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz and having any of the following:

b.3.b.1. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.3.b.2. A peak saturated power output greater than 15 W (41.76 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.3.b.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.3.b.4. A peak saturated power output greater than 7 W (38.45 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.3.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.3.d. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz;

b.3.e. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 43.5 GHz; *or*

b.3.f. Other than those specified by 3A001.b.3.a to 3A001.b.3.e and rated for operation with a peak saturated power output greater than 5 W (37.0 dBm) at all frequencies exceeding 8.5 GHz up to and including 31.8 GHz;

Note 1: *The control status of a transistor in 3A001.b.3.a through 3A001.b.3.e, whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.3.a through 3A001.b.3.e, is determined by the lowest peak saturated power output control threshold.*

Note 2: *3A001.b.3 includes bare dice, dice mounted on carriers, or dice mounted in packages. Some discrete transistors may also be referred to as power amplifiers, but the status of these discrete transistors is determined by 3A001.b.3.*

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing microwave solid state amplifiers, that are any of the following:

b.4.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.4.a.1. A peak saturated power output greater than 500 W (57 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.4.a.2. A peak saturated power output greater than 270 W (54.3 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.4.a.3. A peak saturated power output greater than 200 W (53 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.4.a.4. A peak saturated power output greater than 90 W (49.54 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.4.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.4.b.1. A peak saturated power output greater than 70 W (48.45 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.4.b.2. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.4.b.3. A peak saturated power output greater than 30 W (44.77 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.4.b.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.4.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.4.d. Rated for operation with a peak saturated power output greater than 2 W (33 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz and having any of the following:

b.4.e.1. A peak saturated power output greater than 0.2 W (23 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e.2. A peak saturated power output greater than 20 mW (13 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.4.e.3. A peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz; *or*

b.4.f. [Reserved]

N.B.:

1. *For ''MMIC'' amplifiers see 3A001.b.2.*

2. *For 'transmit/receive modules' and 'transmit modules' see 3A001.b.12.*

3. *For converters and harmonic mixers, designed to extend the operating or frequency range of signal analyzers, signal generators, network analyzers or microwave test receivers, see 3A001.b.7.*

Note 1: *[Reserved]*

Note 2: *The control status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.4.a through 3A001.b.4.e, is determined by the lowest peak saturated power output control threshold.*

b.5. Electronically or magnetically tunable band-pass or band-stop filters, having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 ms and having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [Reserved]

b.7. Converters and harmonic mixers, that are any of the following:

b.7.a. Designed to extend the frequency range of ''signal analyzers'' beyond 90 GHz;

b.7.b. Designed to extend the operating range of signal generators as follows:

b.7.b.1. Beyond 90 GHz;

b.7.b.2. To an output power greater than 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c. Designed to extend the operating range of network analyzers as follows:

b.7.c.1. Beyond 110 GHz;

b.7.c.2. To an output power greater than 31.62 mW (15 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c.3. To an output power greater than 1 mW (0 dBm) anywhere within the frequency range exceeding 90 GHz but not exceeding 110 GHz; *or*

b.7.d. Designed to extend the frequency range of microwave test receivers beyond 110 GHz;

b.8. Microwave power amplifiers containing ''vacuum electronic devices'' controlled by 3A001.b.1 and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power to mass ratio exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: *3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.*

b.9. Microwave Power Modules (MPM) consisting of, at least, a traveling-wave ''vacuum electronic device,'' a ''Monolithic Microwave Integrated Circuit'' (''MMIC'') and an integrated electronic power conditioner and having all of the following:

b.9.a. A 'turn-on time' from off to fully operational in less than 10 seconds;

b.9.b. A volume less than the maximum rated power in Watts multiplied by 10 cm^3/W; *and*

b.9.c. An ''instantaneous bandwidth'' greater than 1 octave ($f_{max} > 2f_{min}$) and having any of the following:

b.9.c.1. For frequencies equal to or less than 18 GHz, an RF output power greater than 100 W; *or*

b.9.c.2. A frequency greater than 18 GHz;

Technical Notes: *For the purposes of 3A001.b.9:*

1. *To calculate the volume in 3A001.b.9.b, the following example is provided: for a maximum rated power of 20 W, the volume would be: 20 W × 10 cm^3/W = 200 cm^3.*

2. *The 'turn-on time' in 3A001.b.9.a refers to the time from fully-off to fully operational, i.e.,it includes the warm-up time of the MPM.*

b.10. Oscillators or oscillator assemblies, specified to operate with a single sideband (SSB) phase noise, in dBc/Hz, less (better) than $-(126 + 20\log_{10}F - 20\log_{10}f)$ anywhere within the range of 10 Hz ≤ F ≤ 10 kHz;

Technical Note: *For the purposes of 3A001.b.10, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.*

b.11. 'Frequency synthesizer' ''electronic assemblies'' having a ''frequency switching time'' as specified by any of the following:

b.11.a. Less than 143 ps;

b.11.b. Less than 100 ms for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;

b.11.c. [Reserved]

b.11.d. Less than 500 μs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 31.8 GHz but not exceeding 37 GHz;

b.11.e. Less than 100 μs for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 37 GHz but not exceeding 75 GHz;

b.11.f. Less than 100 μs for any frequency change exceeding 5.0 GHz within the synthesized frequency range exceeding 75 GHz but not exceeding 90 GHz; *or*

b.11.g. Less than 1 ms within the synthesized frequency range exceeding 90 GHz;

Technical Note: *For the purposes of 3A001.b.11, a 'frequency synthesizer' is any kind of frequency source, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.*

N.B.: *For general purpose ''signal analyzers'', signal generators, network analyzers and microwave test receivers, see 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.*

b.12. 'Transmit/receive modules,' 'transmit/receive MMICs,' 'transmit modules,' and 'transmit MMICs,' rated for operation at frequencies above 2.7 GHz and having all of the following:

b.12.a. A peak saturated power output (in watts), P_{sat}, greater than 505.62 divided by the maximum operating frequency (in GHz) squared [$P_{sat} > 505.62$ W * GHz^2/f_{GHz}^2] for any channel;

b.12.b. A ''fractional bandwidth'' of 5% or greater for any channel;

b.12.c. Any planar side with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [d ≤ 15cm * GHz * N/f_{GHz}] where N is the number of transmit or transmit/receive channels; *and*

b.12.d. An electronically variable phase shifter per channel.

Technical Notes: *For the purposes of 3A001.b.12:*

1. *A 'transmit/receive module' is a multifunction ''electronic assembly'' that provides bi-directional amplitude and phase control for transmission and reception of signals.*

2. *A 'transmit module' is an ''electronic assembly'' that provides amplitude and phase control for transmission of signals.*

3. *A 'transmit/receive MMIC' is a multifunction ''MMIC'' that provides bi-directional amplitude and phase control for transmission and reception of signals.*

4. *A 'transmit MMIC' is a ''MMIC'' that provides amplitude and phase control for transmission of signals.*

5. *2.7 GHz should be used as the lowest operating frequency* (f_{GHz}) *in the formula in 3A001.b.12.c for transmit/receive or transmit modules that have a rated operation range extending downward to 2.7 GHz and below [d ≤ 15cm * GHz * N/2.7 GHz].*

6. *3A001.b.12 applies to 'transmit/receive modules' or 'transmit modules' with or without a heat sink. The value of d in 3A001.b.12.c does not include any portion of the 'transmit/receive module' or 'transmit module' that functions as a heat sink.*

7. *'Transmit/receive modules' or 'transmit modules,' 'transmit/receive MMICs' or 'transmit MMICs' may or may not have N integrated radiating antenna elements where N is the number of transmit or transmit/receive channels.*

c. Acoustic wave devices as follows and ''specially designed'' ''components'' therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices, having any of the following:

c.1.a. A carrier frequency exceeding 6 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 6 GHz and having any of the following:

c.1.b.1. A 'frequency side-lobe rejection' exceeding 65 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in ms and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 µs; *or*

c.1.c. A carrier frequency of 1 GHz or less and having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; *or*

c.1.c.3. A 'frequency side-lobe rejection' exceeding 65 dB and a bandwidth greater than 100 MHz;

Technical Note: *For the purposes of 3A001.c.1, 'frequency side-lobe rejection' is the maximum rejection value specified in data sheet.*

c.2. Bulk (volume) acoustic wave devices that permit the direct processing of signals at frequencies exceeding 6 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

Note: *3A001.c does not control acoustic wave devices that are limited to a single band pass, low pass, high pass or notch filtering, or resonating function.*

d. Electronic devices and circuits containing ''components,'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices as follows:

e.1. 'Cells' as follows:

e.1.a 'Primary cells' having any of the following at 20 °C:

e.1.a.1. 'Energy density' exceeding 550 Wh/kg and a 'continuous power density' exceeding 50 W/kg; *or*

e.1.a.2. 'Energy density' exceeding 50 Wh/kg and a 'continuous power density' exceeding 350 W/kg;

e.1.b. 'Secondary cells' having an 'energy density' exceeding 350 Wh/kg at 20 °C;

Technical Notes:

1. *For the purposes of 3A001.e.1, 'energy density' (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours (Ah) divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.*

2. *For the purposes of 3A001.e.1, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, an electrolyte, and is a source of electrical energy. It is the basic building block of a battery.*

3. *For the purposes of 3A001.e.1.a, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.*

4. *For the purposes of 3A001.e.1.b, a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.*

5. *For the purposes of 3A001.e.1.a, 'continuous power density' (W/kg) is calculated from the nominal voltage multiplied by the specified maximum continuous discharge current in ampere (A) divided by the mass in kilograms. 'Continuous power density' is also referred to as specific power.*

Note: *3A001.e does not control batteries, including single-cell batteries.*

e.2. High energy storage capacitors as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) and having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) and having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids, ''specially designed'' to be fully charged or discharged in less than one second and having all of the following:

Note: *3A001.e.3 does not control ''superconductive'' electromagnets or solenoids ''specially designed'' for Magnetic Resonance Imaging (MRI) medical equipment.*

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

e.4. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space-qualified,'' having a minimum average efficiency exceeding 20% at an operating temperature of 301 K (28°C) under simulated 'AM0' illumination with an irradiance of 1,367 Watts per square meter (W/m^2);

Technical Note: *For the purposes of 3A001.e.4, 'AM0', or 'Air Mass Zero', refers to the spectral irradiance of sun light in the earth's outer atmosphere when the distance between the earth and sun is one astronomical unit (AU).*

f. Rotary input type absolute position encoders having an ''accuracy'' equal to or less (better) than 1.0 second of arc and ''specially designed'' encoder rings, discs or scales therefor;

g. Solid-state pulsed power switching thyristor devices and 'thyristor modules', using either electrically, optically, or electron radiation controlled switch methods and having any of the following:

g.1. A maximum turn-on current rate of rise (di/dt) greater than 30,000 A/µs and off-state voltage greater than 1,100 V; *or*

g.2. A maximum turn-on current rate of rise (di/dt) greater than 2,000 A/µs and having all of the following:

g.2.a. An off-state peak voltage equal to or greater than 3,000 V; *and*

g.2.b. A peak (surge) current equal to or greater than 3,000 A;

Note 1: *3A001.g. includes:*

—Silicon Controlled Rectifiers (SCRs)
—Electrical Triggering Thyristors (ETTs)
—Light Triggering Thyristors (LTTs)
—Integrated Gate Commutated Thyristors (IGCTs)
—Gate Turn-off Thyristors (GTOs)
—MOS Controlled Thyristors (MCTs)
—Solidtrons

Note 2: *3A001.g does not control thyristor devices and 'thyristor modules' incorporated into equipment designed for civil railway or ''civil aircraft'' applications.*

Technical Note: *For the purposes of 3A001.g, a 'thyristor module' contains one or more thyristor devices.*

h. Solid-state power semiconductor switches, diodes, or 'modules', having all of the following:

h.1. Rated for a maximum operating junction temperature greater than 488 K (215 °C);

h.2. Repetitive peak off-state voltage (blocking voltage) exceeding 300 V; *and*

h.3. Continuous current greater than 1 A.

Technical Note: *For the purposes of 3A001.h, 'modules' contain one or more solid-state power semiconductor switches or diodes.*

Note 1: *Repetitive peak off-state voltage in 3A001.h includes drain to source voltage, collector to emitter voltage, repetitive peak*

reverse voltage and peak repetitive off-state blocking voltage.

Note 2: *3A001.h includes:*

—Junction Field Effect Transistors (JFETs)
—Vertical Junction Field Effect Transistors (VJFETs)
—Metal Oxide Semiconductor Field Effect Transistors (MOSFETs)
—Double Diffused Metal Oxide Semiconductor Field Effect Transistor (DMOSFET)
—Insulated Gate Bipolar Transistor (IGBT)
—High Electron Mobility Transistors (HEMTs)
—Bipolar Junction Transistors (BJTs)
—Thyristors and Silicon Controlled Rectifiers (SCRs)
—Gate Turn-Off Thyristors (GTOs)
—Emitter Turn-Off Thyristors (ETOs)
—PiN Diodes
—Schottky Diodes

Note 3: *3A001.h does not apply to switches, diodes, or 'modules', incorporated into equipment designed for civil automobile, civil railway, or ''civil aircraft'' applications.*

i. Intensity, amplitude, or phase electro-optic modulators, designed for analog signals and having any of the following:

i.1. A maximum operating frequency of more than 10 GHz but less than 20 GHz, an optical insertion loss equal to or less than 3 dB and having any of the following:

i.1.a. A 'half-wave voltage' ('Vπ') less than 2.7 V when measured at a frequency of 1 GHz or below; *or*

i.1.b. A 'Vπ' of less than 4 V when measured at a frequency of more than 1 GHz; *or*

i.2. A maximum operating frequency equal to or greater than 20 GHz, an optical insertion loss equal to or less than 3 dB and having any of the following:

i.2.a. A 'Vπ' less than 3.3 V when measured at a frequency of 1 GHz or below; *or*

i.2.b. A 'Vπ' less than 5 V when measured at a frequency of more than 1 GHz.

Note: *3A001.i includes electro-optic modulators having optical input and output connectors (e.g., fiber-optic pigtails).*

Technical Note: *For the purposes of 3A001.i, a 'half-wave voltage' ('Vπ') is the applied voltage necessary to make a phase change of 180 degrees in the wavelength of light propagating through the optical modulator.*

j. through y. [Reserved]

z. Any commodity described in 3A001 that meets or exceeds the performance parameters in 3A090.

* * * * *

3A090 Integrated circuits as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to entire entry.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
NAC: Yes, for 3A090.a, if the item is not designed or marketed for use in datacenters and has a 'total processing performance' of 4800 or more; yes, for 3A090.b, if the item is designed or marketed for use in datacenters.

List of Items Controlled

Related Controls: (1) See ECCNs 3D001, 3E001, 5D002.z, and 5D992.z for associated technology and software controls. (2) See ECCNs 3A001.z, 5A002.z, 5A004.z, and 5A992.z.
Related Definitions: N/A
Items:

a. Integrated circuits having one or more digital processing units having either of the following:

a.1. a 'total processing performance' of 4800 or more, *or*

a.2. a 'total processing performance' of 1600 or more and a 'performance density' of 5.92 or more.

b. Integrated circuits having one or more digital processing units having either of the following:

b.1. a 'total processing performance' of 2400 or more and less than 4800 and a 'performance density' of 1.6 or more and less than 5.92, *or*

b.2. a 'total processing performance' of 1600 or more and a 'performance density' of 3.2 or more and less than 5.92.

Note 1 to 3A090: *Integrated circuits specified by 3A090 include graphical processing units (GPUs), tensor processing units (TPUs), neural processors, in-memory processors, vision processors, text processors, co-processors/accelerators, adaptive processors, field-programmable logic devices (FPLDs), and application-specific integrated circuits (ASICs). Examples of integrated circuits are in the Note to 3A001.a.*

Note 2 to 3A090: *3A090 does not apply to items that are not designed or marketed for use in datacenters and do not have a 'total processing performance' of 4800 or more. For integrated circuits that are not designed or marketed for use in datacenters and that have a 'total processing performance' of 4800 or more, see license exception NAC.*

Note 3 to 3A090: *For ICs that are excluded from ECCN 3A090 under Note 2 or 3 to 3A090, those ICs are also not applicable for classifications made under ECCNs 3A001.z, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z because those other CCL classifications are based on the incorporation of an IC that meets the control parameters under ECCN 3A090 or otherwise meets or exceeds the control parameters or ECCNs 3A090 or 4A090 . See the Related Controls paragraphs of 3A001.z, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z, which reference back to Note 4 to 3A090.*

Technical Notes:

1. 'Total processing performance' ('TPP') is 2 × 'MacTOPS' × 'bit length of the operation', aggregated over all processing units on the integrated circuit.

a. For purposes of 3A090, 'MacTOPS' is the theoretical peak number of Tera (10^{12}) operations per second for multiply-accumulate computation ($D = A \times B + C$).

b. The 2 in the 'TPP' formula is based on industry convention of counting one multiply-accumulate computation, $D = A \times B + C$, as 2 operations for purpose of datasheets. Therefore, 2 × MacTOPS may correspond to the reported TOPS or FLOPS on a datasheet.

c. For purposes of 3A090, 'bit length of the operation' for a multiply-accumulate computation is the largest bit-length of the inputs to the multiply operation.

d. Aggregate the TPPs for each processing unit on the integrated circuit to arrive at a total. 'TPP' = TPP1 + TPP2 + ... + TPPn (where n is the number or processing units on the integrated circuit).

2. The rate of 'MacTOPS' is to be calculated at its maximum value theoretically possible. The rate of 'MacTOPS' is assumed to be the highest value the manufacturer claims in annual or brochure for the integrated circuit. For example, the 'TPP' threshold of 4800 can be met with 600 tera integer operations (or 2 × 300 'MacTOPS') at 8 bits or 300 tera FLOPS (or 2 × 150 'MacTOPS') at 16 bits. If the IC is designed for MAC computation with multiple bit lengths that achieve different 'TPP' values, the highest 'TPP' value should be evaluated against parameters in 3A090.

3. For integrated circuits specified by 3A090 that provide processing of both sparse and dense matrices, the 'TPP' values are the values for processing of dense matrices (e.g., without sparsity).

4. 'Performance density' is 'TPP' divided by 'applicable die area'. For purposes of 3A090, 'applicable die area' is measured in millimeters squared and includes all die area of logic dies manufactured with a process node that uses a non-planar transistor architecture.

* * * * *

3A991 Electronic devices, and ''components'' not controlled by 3A001.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: (1) For associated ''software'' for commodities in this ECCN, see 3D991 and for associated ''technology for commodities in this ECCN, see 3E991. (2) See also ECCNs 5A002.z, 5A004.z, and 5A992.z.
Related Definitions: N/A
Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A performance speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

c.2. A resolution of 12 bit with an output rate greater than 105 million words per second;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 10 million words per second; *or*

c.4. A resolution of more than 14 bit with an output rate greater than 2.5 million words per second;

d. Field programmable logic devices having a maximum number of single-ended digital input/outputs between 200 and 700;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms;

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns;

g. Traveling-wave ''vacuum electronic devices,'' pulsed or continuous wave, as follows:

g.1. Coupled cavity devices, or derivatives thereof;

g.2. Helix devices based on helix, folded waveguide, or serpentine waveguide circuits, *or* derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds;

j. Cells as follows:

j.1. Primary cells having an energy density of 550 Wh/kg or less at 293 K (20 °C);

j.2. Secondary cells having an energy density of 350 Wh/kg or less at 293 K (20 °C);

Note: *3A991.j does not control batteries, including single cell batteries.*

Technical Notes:

1. *For the purposes of 3A991.j energy density (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.*

2. *For the purposes of 3A991.j, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, and electrolyte, and is a source of electrical energy. It is the basic building block of a battery.*

3. *For the purposes of 3A991.j.1, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.*

4. *For the purposes of 3A991.j.2, a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.*

k. ''Superconductive'' electromagnets or solenoids ''specially designed'' to be fully charged or discharged in less than one minute, having all of the following:

Note: *3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.*

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2;

l. Circuits or systems for electromagnetic energy storage, containing ''components'' manufactured from ''superconductive'' materials ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M^3 or more; *and*

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates);

o. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space qualified'' and not controlled by 3A001.e.4;

p. Integrated circuits, n.e.s., having any of the following:

p.1. A processing performance of 8 TOPS or more; or

p.2. An aggregate bidirectional transfer rate over all inputs and outputs of 150 Gbyte/s or more to or from integrated circuits other than volatile memories.

Technical Notes: *For the purposes of 3A991.p:*

1. This ECCN includes but is not limited to central processing units (CPU), graphics processing units (GPU), tensor processing units (TPU), neural processors, in-memory processors, vision processors, text processors, co-processors/accelerators, adaptive processors, and field-programmable logic devices (FPLDs).

2. TOPS is Tera Operations Per Second or 10^{12} Operations per Second.

3. For purposes of 3A991.p, TOPS is 2 × 'MacTOPS' aggregated over all processing units on the integrated circuit.

a. For purposes of 3A991.p, 'MacTOPS' is the theoretical peak number of Tera (10^12) operations per second for multiply-accumulate computation (D = A × B + C).

b. The 2 in the formula is based on industry convention of counting one multiply-accumulate computation, D = A × B + C, as 2 operations for purpose of datasheets. Therefore, 2 × 'MacTOPS' may correspond to the reported TOPS or FLOPS on a datasheet.

* * * * *

3D001 ''Software'' ''specially designed'' for the ''development'' or ''production'' of commodities controlled by 3A001.b to 3A002.h, 3A090, or 3B (except 3B991 and 3B992).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''software'' for commodities controlled by 3A001.b to 3A001.h, 3A002, and 3B (except 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c).	NS Column 1.
NS applies to ''software'' for commodities controlled by 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within destinations specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR or Macau. See § 742.4(a)(4) of the EAR.
RS applies to ''software'' for commodities controlled by 3A001.z and 3A090.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for ''software'' ''specially designed'' for the ''development'' or ''production'' of Traveling Wave Tube Amplifiers described in 3A001.b.8 having operating frequencies exceeding 18 GHz; or commodities specified in 3A001.z, 3A090, 3B001.a.4, c, d, f.1.b, k to p, and 3B002.b and c.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by 3A001.z, 3A090, 3A002.g.1, 3B001.a.4, a.2, c, d, f.1.b, k to p, or 3B002.b and c to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of commodities controlled by 3A (except 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

License Requirements

Reason for Control: NS, MT, NP, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''technology'' for commodities controlled by 3A001 (except 3A001.z), 3A002, 3A003, 3B001 (except 3B001 a.4, c, d, f.1.b, k to p), 3B002 (except 3B002.b and c), or 3C001 to 3C006.	NS Column 1.
NS applies to ''technology'' for 3B001 a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR. *See* § 742.4(a)(4) of the EAR.
MT applies to ''technology'' for commodities controlled by 3A001 (except for 3A001.z) or 3A101 for MT Reasons.	MT Column 1.
NP applies to ''technology'' for commodities controlled by 3A001 (except 3A001.z), 3A201, or 3A225 to 3A234 for NP reasons.	NP Column 1.
RS applies to ''technology'' for commodities controlled in 3A090, when exported from Macau or a destination specified in Country Group D:5.	Worldwide (See § 742.6(a)(6)(ii).
RS applies to ''technology'' for commodities controlled by 3A001.z, 3A090.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
RS applies to ''technology'' for commodities controlled by 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.	To or within destinations specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR or Macau. See § 742.6(a)(6)(i) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except N/A for MT, and ''technology'' for the ''development'' or ''production'' of: (a) vacuum electronic device amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies'', solar arrays and/or solar panels described in 3A001.e.4; (c) ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2; (d) discrete microwave transistors in 3A001.b.3; and (e) commodities described in 3A001.z, 3A090, 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of

components specified by ECCN 3A001.b.2, b.3, commodities specified in 3A001.z, 3A090, 3B001.a.4, c, d, f.1.b, k to p, or 3B002.b and c, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of ''Microwave Monolithic Integrated Circuits'' (''MMIC'') amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

Related Definition: N/A

Items:

The list of items controlled is contained in the ECCN heading.

Note 1: *3E001 does not control ''technology'' for equipment or ''components'' controlled by 3A003.*

Note 2: *3E001 does not control ''technology'' for integrated circuits controlled by 3A001.a.3 to a.14 or .z, having all of the following:*

(a) Using ''technology'' at or above 0.130 μm; and

(b) Incorporating multi-layer structures with three or fewer metal layers.

Note 3: *3E001 does not apply to 'Process Design Kits' ('PDKs') unless they include libraries implementing functions or technologies for items specified by 3A001.*

Technical Note: *For the purposes of 3E001 Note 3, a 'Process Design Kit' ('PDK') is a software tool provided by a semiconductor manufacturer to ensure that the required design practices and rules are taken into account in order to successfully produce a specific integrated circuit design in a specific semiconductor process, in accordance with technological and manufacturing constraints (each semiconductor manufacturing process has its particular 'PDK').*

* * * * *

CATEGORY 4—COMPUTERS

* * * * *

Note 3: Commodities and ''software'' in ECCNs 4A005 and 4D004 that are also controlled in ECCNs 5A002.a, 5A002.z.1, 5A002.z.6, 5A004.a, 5A004.b, 5A004.z, 5D002.c.1, 5D002.c.3, 5D002.z.6, 5D002.z.8, or 5D002.z.9, remain controlled in Category 5—Part 2 by those entries. Category 5—Part 2 does not apply to elements of source code that implement functionality controlled by these Category 4 ECCNs, or to any item subject to the EAR where Encryption Item (EI) functionality is absent, removed or otherwise non-existent.

* * * * *

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows (see List of Items Controlled) and ''specially designed'' ''components'' therefor.

License Requirements

Reason for Control: NS, RS, CC, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.g.	NS Column 2.
RS applies to 4A003.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a APP >0.0128 but ≤70 WT).	AT Column 1.

Note: *For all destinations, except those countries in Country Group E:1 or E:2 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an ''Adjusted Peak Performance'' (''APP'') not exceeding 70 Weighted TeraFLOPS (WT) and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding an ''Adjusted Peak Performance'' (''APP'') exceeding 70 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).*

Reporting Requirements

Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5000; N/A for 4A003.b, .c, and .z.

GBS: Yes, for 4A003.g and ''specially designed'' ''parts'' and ''components'' therefor, exported separately or as part of a system.

APP: Yes, for computers controlled by 4A003.b, and ''electronic assemblies'' controlled by 4A003.c, to the exclusion of other technical parameters. See § 740.7 of the EAR.

NAC: Yes, for 4A003.z; N/A for all other 4A003 commodities.

Note to List Based License Exceptions: *Related equipment specified under ECCN 4A003.g, z.2, or z.4 are eligible for License Exception GBS if all the following conditions are met:*

■ 1. The related equipment is exported, reexported, or transferred (in-country) as part of a computer system,

■ 2. The computer system is either designated as NLR or eligible for License Exception APP, and

■ 3. The related equipment is eligible for License Exception APP.

List of Items Controlled

Related Controls: (1) See also ECCNs 4A090, 4A994 and 4A980. (2) See also Note 4 to ECCN 3A090.

Related Definitions: N/A

Items:

Note 1: *4A003 includes the following:*

—'Vector processors' (as defined in Note 7 of the ''Technical Note on ''Adjusted Peak Performance'' (''APP'')'');

—Array processors;

—Digital signal processors;

—Logic processors;

—Equipment designed for ''image enhancement.''

Note 2: *The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:*

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: *The control status of ''signal processing'' or ''image enhancement'' equipment ''specially designed'' for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.*

N.B. 2: *For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).*

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. [Reserved]

b. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 70 Weighted TeraFLOPS (WT);

c. ''Electronic assemblies'' ''specially designed'' or modified to be capable of enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4A003.b.;

Note 1: *4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b when shipped as unintegrated ''electronic assemblies.''*

Note 2: *4A003.c does not control ''electronic assemblies'' ''specially designed'' for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.*

d. to f. [Reserved]

N.B.: *For ''electronic assemblies,'' modules or equipment, performing analog-to-digital conversions, see 3A002.h.*

g. Equipment ''specially designed'' for aggregating the performance of ''digital computers'' by providing external interconnections which allow communications at unidirectonal data rates exceeding 2.0 Gbyte/s per link.

Note: *4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment,* ''*network access controllers*'' *or* ''*communication channel controllers*''.

h. through y. [Reserved]

z. Commodities specified in 4A003 that also meet or exceed the performance parameters in 4A090.

4A004 Computers as follows (see List of Items Controlled) and ''specially designed'' related equipment, ''electronic assemblies'' and ''components'' therefor.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry (except 4A004.z).	NS Column 2.
RS applies to 4A004.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $5000; N/A 4A004.z
GBS: N/A
NAC: Yes, for 4A004.z; N/A for all other 4A004 commodities.

List of Items Controlled

Related Controls: (1) See also ECCN 4A090. (2) See also Note 4 to ECCN 3A090.
Related Definitions: N/A
Items:

a. 'Systolic array computers';
b. 'Neural computers';
c. 'Optical computers'.

Technical Notes:

1. For the purposes of 4A004.a, 'systolic array computers' are computers where the flow and modification of the data is dynamically controllable at the logic gate level by the user.

2. For the purposes of 4A004.b, 'neural computers' are computational devices designed or modified to mimic the behaviour of a neuron or a collection of neurons, i.e., computational devices which are distinguished by their hardware capability to modulate the weights and numbers of the interconnections of a multiplicity of computational components based on previous data.

3. For the purposes of 4A004.c, 'optical computers' are computers designed or modified to use light to represent data and whose computational logic elements are based on directly coupled optical devices.

d. through y. [Reserved]

z. Commodities that are described in 4A004 and that also meet or exceed the performance parameters in 4A090.

4A005 ''Systems,'' ''equipment,'' and ''components'' therefor, ''specially designed'' or modified for the generation, command and control, or delivery of ''intrusion software'' (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry (except 4A005.z).	NS Column 1.
RS applies to items controlled by 4A005.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
APP: N/A
ACE: Yes, except to Country Group E:1 or E:2 and for 4A005.z. See § 740.22 of the EAR for eligibility criteria.
NAC: Yes, for 4A005.z; N/A for all other 4A005 commodities.

Special Conditions for STA

STA: License Exception STA may not be used to ship items specified by ECCN 4A005.

List of Items Controlled

Related Controls: (1) Defense articles described in USML Category XI(b), and software directly related to a defense article, are ''subject to the ITAR''; see § 120.33(a)(4). (2) See also ECCNs 4A090. (3) See also Note 4 to ECCN 3A090.
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading, except for the commodities controlled under 4A005.z.

a. through y. [Reserved]

z. Commodities that are specified in 4A005 that also meet or exceed the performance parameters in 4A090.

4A090 Computers as follows (see List of Items Controlled) and related equipment, ''electronic assemblies,'' and ''components'' therefor.

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to entire entry.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
NAC: Yes, for 4A090, if the item incorporates a 3A090.a IC that is not designed or marketed for use in datacenters and has a 'total processing performance' of 4800 or more, or if the 4A090 item incorporates a 3A090.b IC, if the item is designed or marketed for use in datacenters.

List of Items Controlled

Related Controls: (1) For associated ''software'' for commodities in this ECCN, see 4D090, 5D002.z, and 5D992.z and for associated ''technology'' for commodities in this ECCN, see 4E001. (2) Also ECCNs 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, and 5A992.z. (3) See also Note 4 to ECCN 3A090.
Related Definitions: N/A
Items:

a. Computers, ''electronic assemblies,'' and ''components'' containing integrated circuits, any of which meets or exceeds the limit in 3A090.a.

Technical Note: *For purposes of 4A090.a, computers include* ''*digital computers,*'' ''*hybrid computers,*'' *and analog computers.*

b. [Reserved]

* * * * *

4A994 Computers, ''electronic assemblies'' and related equipment, not controlled by 4A001 or 4A003, and ''specially designed'' ''parts'' and ''components'' therefor (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A

List of Items Controlled

Related Controls: (1) For associated ''software'' for commodities in this ECCN, see 4D994 and for associated ''technology'' for commodities in this ECCN, see 4E992. (2) See also ECCNs 4A003.z, 4A004.z, 4A005.z, 5A002.z, 5A004.z, and 5A992.z.
Related Definitions: N/A
Items:

Note 1: *The control status of the ''digital computers'' and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:*

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: *The control status of ''signal processing'' or ''image enhancement'' equipment ''specially designed'' for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.*

N.B. 2: *For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).*

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Electronic computers and related equipment, and ''electronic assemblies'' and ''specially designed'' ''parts'' and ''components'' therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. ''Digital computers'', including equipment of ''signal processing'' or image enhancement'', having an ''Adjusted Peak Performance'' (''APP'') equal to or greater than 0.0128 Weighted TeraFLOPS (WT);

c. ''Electronic assemblies'' that are ''specially designed'' or modified to enhance performance by aggregation of processors, as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more processors;

c.2. [Reserved];

Note 1: *4A994.c applies only to ''electronic assemblies'' and programmable interconnections with a ''APP'' not exceeding the limits in 4A994.b, when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A994.k.*

Note 2: *4A994.c does not control any ''electronic assembly'' ''specially designed'' for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.*

d. [Reserved];

e. [Reserved];

f. Equipment for ''signal processing'' or ''image enhancement'' having an ''Adjusted Peak Performance'' (''APP'') equal to or greater than 0.0128 Weighted TeraFLOPS WT;

g. [Reserved];

h. [Reserved];

i. Equipment containing ''terminal interface equipment'' exceeding the limits in 5A991;

j. Equipment ''specially designed'' to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: *4A994.j does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.*

k. ''Hybrid computers'' and ''electronic assemblies'' and ''specially designed'' ''parts'' and ''components'' therefor containing analog-to-digital converters having all of the following characteristics:

k.1. 32 channels or more; and

k.2. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

l. Computers, ''electronic assemblies,'' and ''components,'' n.e.s., containing integrated circuits, any of which meets or exceeds the limit of ECCN 3A991.p.

Technical Note: *For the purposes of 4A994.l, computers include ''digital computers,'' ''hybrid computers,'' and analog computers.*

* * * * *

4D001 ''Software'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, CC, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except 4A003.z, 4A004.z, and 4A005.z.	NS Column 1.
RS applies to ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: Yes, except for ''software'' for the ''development'' or ''production'' of the following:
(1) Commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 29 WT; or
(2) Commodities controlled by 4A003.z, 4A004.z, 4A005 or ''software'' controlled by 4D004.
APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria), except ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z.
ACE: (1) Yes for 4D001.a (for the ''development'', ''production'' or ''use'' of equipment or ''software'' specified in ECCN 4A005 or 4D004), except to Country Group E:1 or E:2. See § 740.22 of the EAR for eligibility criteria. (2) No for ''software'' for commodities controlled by 4A003.z, 4A004.z, and 4A005.z

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' or modified for the ''development'' or ''production'' of equipment specified by ECCN 4A001.a.2 or for the ''development'' or ''production'' of ''digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 29 Weighted TeraFLOPS (WT) to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR); and may not be used to ship or transmit ''software'' specified in 4D001.a ''specially designed'' for the ''development'' or ''production'' of equipment specified by ECCN 4A003.z, 4A004.z, or 4A005 to any of the destinations listed in Country Group A:5 or A:6.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. ''Software'' ''specially designed'' or modified for the ''development'' or ''production'', of equipment or ''software'' controlled by 4A001, 4A003, 4A004, 4A005 or 4D (except 4D090, 4D980, 4D993 or 4D994).

b. ''Software'', other than that controlled by 4D001.a, ''specially designed'' or modified for the ''development'' or ''production'' of equipment as follows:

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 24 Weighted TeraFLOPS (WT);

b.2. ''Electronic assemblies'' ''specially designed'' or modified for enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4D001.b.1.

* * * * *

4E001 ''Technology'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, CC, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except for technology for 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z or 4A005.z), 4D090.	NS Column 1.
MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.
RS applies to ''technology'' for commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D090.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 (except 4A003.z) for CC reasons.	CC Column 1.
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for Description of All License Exceptions)

TSR: Yes, except for the following:

(1) ''Technology'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 70 WT or for the ''development'' or ''production'' of commodities controlled by 4A005 or ''software'' controlled by 4D004;

(2) ''Technology'' for the ''development'' of ''intrusion software''; or

(3) ''Technology'' for the ''development'' or ''production'' of commodities controlled by 4A003.z, 4A004.z, 4A005.z, 4A090 or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D090 when destined to destinations in Country Group D:1, D:4, or D:5 of supplement no. 1 to part 740 of the EAR.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria). No, for ''technology'' for the ''development'' or ''production'' of commodities controlled by 4A003.z, or ''software'' specified by 4D001 (for 4A003.z) when destined to destinations in Country Group D:1, D:4, or D:5 of supplement no. 1 to part 740 of the EAR.

ACE: Yes for 4E001.a (for the ''development'', ''production'' or ''use'' of equipment or ''software'' specified in ECCN 4A005 (except 4A005.z to destinations in Country Group D:1, D:4, or D:5) or 4D004) and for 4E001.c, except to Country Group E:1 or E:2. See § 740.22 of the EAR for eligibility criteria.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following equipment or ''software'': a. Equipment specified by ECCN 4A001.a.2; b. ''Digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 70 Weighted TeraFLOPS (WT); or c. ''software'' specified in the License Exception STA paragraph found in the License Exception section of ECCN 4D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR); and may not be used to ship or transmit ''technology'' specified in 4E001.a (for the ''development'', ''production'' or ''use'' of equipment or ''software'' specified in ECCN 4A003.z, 4A004.z, 4A005, 4A090, or ''software'' specified by 4D001 (for 4A003.z, 4A004.z, and 4A005.z), 4D004, or 4D090); and 4E001.c to any of the destinations listed in Country Group A:5 or A:6.

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items:

a. ''Technology'' according to the General Technology Note, for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 4A (except 4A980 or 4A994 and ''use'' of equipment controlled under 4A090 or ''software'' controlled under 4D001 (for 4A090)) or 4D (except 4D980, 4D993, 4D994 and ''use'' of software controlled under 4D090).

b. ''Technology'' according to the General Technology Note, other than that controlled by 4E001.a, for the ''development'' or ''production'' of equipment as follows:

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 24 Weighted TeraFLOPS (WT);

b.2. ''Electronic assemblies'' ''specially designed'' or modified for enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4E001.b.1.

c. ''Technology'' for the ''development'' of ''intrusion software.''

Note 1: *4E001.a and 4E001.c do not apply to ''vulnerability disclosure'' or ''cyber incident response''.*

Note 2: *Note 1 does not diminish national authorities' rights to ascertain compliance with 4E001.a and 4E001.c.*

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TECHNICAL NOTE ON ''ADJUSTED PEAK PERFORMANCE'' (''APP'')

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Technical Notes

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2. Processor combinations share memory when any processor is capable of accessing any memory location in the system through the hardware transmission of cache lines or memory words, without the involvement of any software mechanism, which may be achieved using ''electronic assemblies'' specified in 4A003.c, z.1, or z.3.

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CATEGORY 5—TELECOMMUNICATIONS AND ''INFORMATION SECURITY''

Part 1—TELECOMMUNICATIONS

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Notes:

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3. Commodities in ECCN 5A001.j, and related ''software'' specified in 5D001.c (for 5A001.j) that are also controlled in ECCNs 5A002.a, 5A002.z.1, 5A002.z.6, 5A004.a, 5A004.b, 5A004.z, 5D002.c.1, 5D002.c.3, 5D002.z.6, 5D002.z.8, or z 5D002.z.9, remain controlled in Category 5—Part 2 by those entries. Category 5—Part 2 does not apply to elements of source code that implement functionality controlled by these Category 5 Part 1 ECCNs, or to any item subject to the EAR where Encryption Item (EI) functionality is absent, removed or otherwise non-existent.

* * * * *

5E001 ''Technology'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, SL, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1.
SL applies to ''technology'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.f.1, or for the ''development'' or ''production'' of ''software'' controlled by ECCN 5D001.a (for 5A001.f.1).	A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). *Note to SL paragraph: This licensing requirement does not supersede, implement, construe or limit the scope of any criminal statute, including, but not limited to, the Omnibus Safe Streets Act of 1968, as amended.*
AT applies to entire entry.	AT Column 1.

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for Description of All License Exceptions)

TSR: Yes, except for exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' controlled by 5E001 for the ''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.5, .h or .j;

(2) ''Software'' controlled by 5D001.a that is ''specially designed'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5, 5A001.h, 5A001.j, or 5B001.a (for 5A001.j); or

(3) ''Software'' controlled by 5D001.c (for 5A001.j or 5B001.a (for 5A001.j)).

ACE: Yes, for 5E001.a (for 5A001.j, 5B001.a (for 5A001.j), 5D001.a (for 5A001.j), or 5D001.c (for 5A001.j or 5B001.a (for 5A001.j))) except to Country Group E:1 or E:2. See § 740.22 of the EAR for eligibility criteria.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment, functions or features specified by 5A001.b.3, .b.5 or .h; or for ''software'' in 5D001.a or .c, that is specified in the STA paragraph in the License Exception section of ECCN 5D001 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR); or ''technology'' specified in 5E001.a according to the General Technology Note for the ''development'' or ''production'' of equipment, functions or features specified by 5A001.j, 5B001.a (for 5A001.j), 5D001.a (for 5A001.j), 5D001.c (for 5A001.j or 5B001.a) to any destinations listed in Country Group A:5 or A:6.

List of Items Controlled

Related Controls: (1) See also 5E101, 5E980 and 5E991. (2) ''Technology'' for ''development'' or ''production'' of ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that meet the control criteria given at 3A001.b.2 or .z (for commodities also described in 3A001.b.2) is controlled in 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.

Related Definitions: N/A

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features, controlled by 5A001 or ''software'' controlled by 5D001.a or 5D001.e.

b. Specific ''technology'', as follows:

b.1. ''Technology'' ''required'' for the ''development'' or ''production'' of telecommunications equipment ''specially designed'' to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software'';

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

Note: *5E001.b.4 does not apply to ''technology'' for the ''development'' of any of the following:*

a. Civil cellular radio-communications systems; or

b. Fixed or mobile satellite Earth stations for commercial civil telecommunications.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following:

c.1. [Reserved]

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1,750 nm;

c.2.b. [Reserved]

c.2.c. [Reserved]

c.2.d. Employing wavelength division multiplexing techniques of optical carriers at less than 100 GHz spacing; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: *5E001.c.2.e does not control ''technology'' for commercial TV systems.*

N.B.: *For ''technology'' for the ''development'' or ''production'' of non-telecommunications equipment employing a ''laser'', see Product Group E of Category 6, e.g., 6E00x*

c.3. Equipment employing ''optical switching'' and having a switching time less than 1 ms; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024; *or*

c.4.b. Operating at input or output frequencies exceeding 31.8 GHz; *or*

Note: *5E001.c.4.b does not control ''technology'' for equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.*

c.4.c. Operating in the 1.5 MHz to 87.5 MHz band and incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

c.5. [Reserved]

c.6. Mobile equipment having all of the following:

c.6.a. Operating at an optical wavelength greater than or equal to 200nm and less than or equal to 400nm; *and*

c.6.b. Operating as a ''local area network'';

d. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers ''specially designed'' for telecommunications and that are any of the following:

Technical Note: *For purposes of 5E001.d, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

d.1. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

d.1.a. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

d.1.b. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

d.1.c. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

d.1.d. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

d.2. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

d.2.a. A peak saturated power output greater than 10W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; or

d.2.b. A peak saturated power output greater than 5W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

d.3. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.4. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

d.5. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.6. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.7. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; or

d.8. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

e. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of electronic devices and circuits, ''specially designed'' for telecommunications and containing ''components'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures

below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

e.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

e.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000.

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Category 5—Telecommunications and ''Information Security''

Part 2—''Information Security''

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Note 3: *Cryptography Note: ECCNs 5A002, 5D002.a.1, .b, .c.1, z.1, z.5, and z.6, do not control items as follows:*

* * * * *

N.B. to Note 3 (Cryptography Note): *You must submit a classification request or self-classification report to BIS for certain mass market encryption commodities and software eligible for the Cryptography Note employing a key length greater than 64 bits for the symmetric algorithm (or, for commodities and software not implementing any symmetric algorithms, employing a key length greater than 768 bits for asymmetric algorithms described by Technical note 2.b to 5A002.a or greater than 128 bits for elliptic curve algorithms, or any asymmetric algorithm described by Technical Note 2.c to 5A002.a) in accordance with the requirements of § 740.17(b) of the EAR in order to be released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002. For mass market commodities and software that do not require a self-classification report pursuant to § 740.17(b) and (e)(3) of the EAR, such items are also released from ''EI'' and ''NS'' controls and controlled under ECCN 5A992 or 5D992.*

* * * * *

5A002 ''Information security'' systems, equipment and ''components,'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry (except 5A002.z).	NS Column 1.
RS applies to items controlled by 5A002.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.
EI applies to entire entry.	Refer to § 742.15 of the EAR.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for Description of All License Exceptions)

LVS: Yes: $500 for ''components,'' except for 5A002.z.
N/A for systems and equipment.
GBS: N/A
ENC: Yes for certain EI controlled commodities, see § 740.17 of the EAR for eligibility, except for 5A002.z.
NAC: Yes, for 5A002.z; N/A for all other 5A002 commodities.

List of Items Controlled

Related Controls: (1) ECCN 5A002.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A002.a. (2) See USML Categories XI (including XI(b)) and XIII(b) (including XIII(b)(2)) for controls on systems, equipment, and components described in 5A002.d or .e that are subject to the ITAR. (3) For ''satellite navigation system'' receiving equipment containing or employing decryption see 7A005, and for related decryption ''software'' and ''technology'' see 7D005 and 7E001. (4) Noting that items may be controlled elsewhere on the CCL, examples of items not controlled by ECCN 5A002.a.4 include the following: (a) An automobile where the only 'cryptography for data confidentiality' having a 'described security algorithm' is performed by a Category 5—Part 2 Note 3 eligible mobile telephone that is built into the car. In this case, secure phone communications support a non-primary function of the automobile but the mobile telephone (equipment), as a standalone item, is not controlled by ECCN 5A002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5A992.c). (b) An exercise bike with an embedded Category 5—Part 2 Note 3 eligible web browser, where the only controlled cryptography is performed by the web browser. In this case, secure web browsing supports a non-primary function of the exercise bike but the web browser (''software''), as a standalone item, is not controlled by ECCN 5D002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5D992.c). (5) After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are designated 5A992.c. (6) See also ECCNs 3A090 (including Note 4 to ECCN 3A090), and 4A090.

Related Definitions: N/A

Items:

a. Designed or modified to use 'cryptography for data confidentiality' having a 'described security algorithm', where that cryptographic capability is usable, has been activated, or can be activated by any means other than secure ''cryptographic activation'', as follows:

a.1. Items having ''information security'' as a primary function;

a.2. Digital communication or networking systems, equipment or components, not specified in paragraph 5A002.a.1;

a.3. Computers, other items having information storage or processing as a primary function, and components therefor, not specified in paragraphs 5A002.a.1 or .a.2;

N.B.: *For operating systems see also 5D002.a.1 and .c.1.*

a.4. Items, not specified in paragraphs 5A002.a.1 to a.3, where the 'cryptography for data confidentiality' having a 'described security algorithm' meets all of the following:

a.4.a. It supports a non-primary function of the item; *and*

a.4.b. It is performed by incorporated equipment or ''software'' that would, as a standalone item, be specified by ECCNs 5A002, 5A003, 5A004, 5B002 or 5D002.

N.B. to paragraph a.4: *See Related Control Paragraph (4) of this ECCN 5A002 for examples of items not controlled by 5A002.a.4.*

Technical Notes:

1. For the purposes of 5A002.a, 'cryptography for data confidentiality' means ''cryptography'' that employs digital techniques and performs any cryptographic function other than any of the following:

1.a. ''Authentication;''

1.b. Digital signature;

1.c. Data integrity;

1.d. Non-repudiation;

1.e. Digital rights management, including the execution of copy-protected ''software;''

1.f. Encryption or decryption in support of entertainment, mass commercial broadcasts or medical records management; or

1.g. Key management in support of any function described in paragraphs 1.a to 1.f of this Technical Note paragraph 1.

2. For the purposes of 5A002.a, 'described security algorithm' means any of the following:

2.a. A ''symmetric algorithm'' employing a key length in excess of 56 bits, not including parity bits;

2.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

2.b.1. Factorization of integers in excess of 512 bits (e.g., RSA);

2.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (e.g., Diffie-Hellman over Z/pZ); or

2.b.3. Discrete logarithms in a group other than mentioned in paragraph 2.b.2 of this Technical Note in excess of 112 bits (e.g., Diffie-Hellman over an elliptic curve); or

2.c. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

2.c.1. Shortest vector or closest vector problems associated with lattices (e.g., NewHope, Frodo, NTRUEncrypt, Kyber, Titanium);

2.c.2. Finding isogenies between Supersingular elliptic curves (e.g., Supersingular Isogeny Key Encapsulation); or

2.c.3. Decoding random codes (e.g., McEliece, Niederreiter).

Technical Note: *An algorithm described by Technical Note 2.c. may be referred to as being post-quantum, quantum-safe or quantum-resistant.*

Note 1: *Details of items must be accessible and provided upon request, in order to establish any of the following:*

a. Whether the item meets the criteria of 5A002.a.1 to a.4; or

b. Whether the cryptographic capability for data confidentiality specified by 5A002.a is usable without ''cryptographic activation.''

Note 2: *5A002.a does not control any of the following items, or specially designed ''information security'' components therefor:*

a. Smart cards and smart card 'readers/writers' as follows:

a.1. A smart card or an electronically readable personal document (e.g., token coin, e-passport) that meets any of the following:

a.1.a. The cryptographic capability meets all of the following:

a.1.a.1. It is restricted for use in any of the following:

a.1.a.1.a. Equipment or systems, not described by 5A002.a.1 to a.4;

a.1.a.1.b. Equipment or systems, not using 'cryptography for data confidentiality' having a 'described security algorithm'; or

a.1.a.1.c. Equipment or systems, excluded from 5A002.a by entries b. to f. of this Note; and

a.1.a.2. It cannot be reprogrammed for any other use; or

a.1.b. Having all of the following:

a.1.b.1. It is specially designed and limited to allow protection of 'personal data' stored within;

a.1.b.2. Has been, or can only be, personalized for public or commercial transactions or individual identification; and

a.1.b.3. Where the cryptographic capability is not user-accessible;

Technical Note to paragraph a.1.b.1 of Note 2: *For the purposes of 5A002.a Note 2.a.1.b.1,'personal data' includes any data specific to a particular person or entity, such as the amount of money stored and data necessary for ''authentication.''*

a.2. 'Readers/writers' specially designed or modified, and limited, for items specified by paragraph a.1 of this Note;

Technical Note to paragraph a.2 of Note 2: *'For the purposes of 5A002.a Note 2.a.2, 'readers/writers' include equipment that communicates with smart cards or electronically readable documents through a network.*

b. Cryptographic equipment specially designed and limited for banking use or 'money transactions';

Technical Note to paragraph b. of Note 2: *For the purposes of 5A002.a Note 2.b,'money transactions' in 5A002 Note 2 paragraph b. includes the collection and settlement of fares or credit functions.*

c. Portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radio communication systems) that are not capable of transmitting encrypted data directly to another radiotelephone or equipment (other than Radio Access Network (RAN) equipment), nor of passing encrypted data through RAN equipment (e.g., Radio Network Controller (RNC) or Base Station Controller (BSC));

d. Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (i.e., a single, unrelayed hop between terminal and home base station) is less than 400 meters according to the manufacturer's specifications;

e. Portable or mobile radiotelephones and similar client wireless devices for civil use, that implement only published or commercial cryptographic standards (except for anti-piracy functions, which may be non-published) and also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), that have been customized for a specific civil industry application with features that do not affect the cryptographic functionality of these original non-customized devices;

f. Items, where the ''information security'' functionality is limited to wireless ''personal area network'' functionality implementing only published or commercial cryptographic standards;

g. Mobile telecommunications Radio Access Network (RAN) equipment designed for civil use, which also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), having an RF output power limited to 0.1W (20 dBm) or less, and supporting 16 or fewer concurrent users;

h. Routers, switches, gateways or relays, where the ''information security'' functionality is limited to the tasks of ''Operations, Administration or Maintenance'' (''OAM'') implementing only published or commercial cryptographic standards;

i. General purpose computing equipment or servers, where the ''information security'' functionality meets all of the following:

i.1. Uses only published or commercial cryptographic standards; and

i.2. Is any of the following:

i.2.a. Integral to a CPU that meets the provisions of Note 3 in Category 5—Part 2;

i.2.b. Integral to an operating system that is not specified by 5D002; or

i.2.c. Limited to ''OAM'' of the equipment; or

j. Items specially designed for a 'connected civil industry application', meeting all of the following:

j.1. Being any of the following:

j.1.a. A network-capable endpoint device meeting any of the following:

j.1.a.1. The ''information security'' functionality is limited to securing 'non-arbitrary data' or the tasks of ''Operations, Administration or Maintenance'' (''OAM'');

or

j.1.a.2. The device is limited to a specific 'connected civil industry application'; or

j.1.b. Networking equipment meeting all of the following:

j.1.b.1. Being specially designed to communicate with the devices specified by paragraph j.1.a. above; and

j.1.b.2. The ''information security'' functionality is limited to supporting the 'connected civil industry application' of devices specified by paragraph j.1.a. above, or the tasks of ''OAM'' of this networking equipment or of other items specified by paragraph j. of this Note; and

j.2. Where the ''information security'' functionality implements only published or commercial cryptographic standards, and the cryptographic functionality cannot easily be changed by the user.

Technical Notes:

1. For the purposes of 5A002.a Note 2.j,'connected civil industry application' means a network-connected consumer or civil industry application other than ''information security'', digital communication, general purpose networking or computing.

2. For the purposes of 5A002.a Note 2.j.1.a.1,'non-arbitrary data' means sensor or metering data directly related to the stability, performance or physical measurement of a system (e.g., temperature, pressure, flow rate, mass, volume, voltage, physical location, etc.), that cannot be changed by the user of the device.

b. Being a 'cryptographic activation token';

Technical Note: *For the purposes of 5A002.b, a 'cryptographic activation token' is an item designed or modified for any of the following:*

1. Converting, by means of ''cryptographic activation'', an item not specified by Category 5—Part 2 into an item specified by 5A002.a or 5D002.c.1, and not released by the Cryptography Note (Note 3 in Category 5—Part 2); or

2. Enabling by means of ''cryptographic activation'', additional functionality specified by 5A002.a of an item already specified by Category 5—Part 2;

c. Designed or modified to use or perform ''quantum cryptography'';

Technical Note: *For the purposes of 5A002.c,''quantum cryptography'' is also known as Quantum Key Distribution (QKD).*

d. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:

d.1. A bandwidth exceeding 500 MHz; *or*

d.2. A ''fractional bandwidth'' of 20% or more;

e. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, not specified by 5A002.d, including the hopping code for ''frequency hopping'' systems.

f. through y. [Reserved]

z. Other commodities, as follows:

z.1. Commodities that are described in 5A002.a and that also meet or exceed the performance parameters in 3A090 or 4A090;

z.2. Commodities that are described in 5A002.b and that also meet or exceed the performance parameters in 3A090 or 4A090;

z.3. Commodities that are described in 5A002.c and that also meet or exceed the performance parameters in 3A090 or 4A090;

z.4. Commodities that are described in 5A002.d and that also meet or exceed the

performance parameters in 3A090 or 4A090; *or*

z.5. Commodities that are described in 5A002.e and that also meet or exceed the performance parameters in 3A090 or 4A090.

5A992 Equipment not controlled by 5A002 (see List of Items Controlled)

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to items controlled by 5A992.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
NAC: Yes, for 5A992.z; N/A for all other 5A992 commodities.

List of Items Controlled

Related Controls: See also ECCNs 3A090 (including Note 4 to ECCN 3A090) and 4A090.
Related Definitions: N/A
Items:

a. [Reserved]

b. [Reserved]

c. Commodities classified as mass market encryption commodities in accordance with § 740.17(b) of the EAR.

d. through y. [Reserved]

z. Commodities that are described in 5A992.c and that also meet or exceed the performance parameters in 3A090 or 4A090.

* * * * *

5A004 ''Systems,'' ''equipment'' and ''components'' for defeating, weakening or bypassing ''information security,'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry (except 5A004.z).	NS Column 1.
RS applies to items controlled by 5A004.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.
EI applies to entire entry.	Refer to § 742.15 of the EAR.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: Yes: $500 for ''components,'' except for 5A004.z.
N/A for systems and equipment.
GBS: N/A
ENC: Yes for certain EI controlled commodities, except for 5A004.z. See § 740.17 of the EAR for eligibility.
NAC: Yes, for 5A004.z; N/A for all other 5A004 commodities.

List of Items Controlled

Related Controls: (1) ECCN 5A004.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A004.a. (2) See also ECCNs 3A090 (including Note 4 to ECCN 3A090) and 4A090.
Related Definitions: N/A
Items:

a. Designed or modified to perform 'cryptanalytic functions.'

Note: *5A004.a includes systems or equipment, designed or modified to perform 'cryptanalytic functions' by means of reverse engineering.*

Technical Note: *For the purposes of 5A004.a,'cryptanalytic functions' are functions designed to defeat cryptographic mechanisms in order to derive confidential variables or sensitive data, including clear text, passwords or cryptographic keys.*

b. Items, not specified by ECCNs 4A005 or 5A004.a, designed to perform all of the following:

b.1. 'Extract raw data' from a computing or communications device; *and*

b.2. Circumvent ''authentication'' or authorisation controls of the device, in order to perform the function described in 5A004.b.1.

Technical Note: *For the purposes of 5A004.b.1, 'extract raw data' from a computing or communications device means to retrieve binary data from a storage medium, e.g., RAM, flash or hard disk, of the device without interpretation by the device's operating system or filesystem.*

Note 1: *5A004.b does not apply to systems or equipment specially designed for the ''development'' or ''production'' of a computing or communications device.*

Note 2: *5A004.b does not include:*

a. Debuggers, hypervisors;

b. Items limited to logical data extraction;

c. Data extraction items using chip-off or JTAG; or

d. Items specially designed and limited to jail-breaking or rooting.

c. through y. [Reserved]

z. Other commodities, as follows:

z.1. Commodities that are described in 5A004.a and that also meet or exceed the performance parameters in 3A090 or 4A090; *or*

z.2. Commodities that are described in 5A004.b and that also meet or exceed the performance parameters in 3A090 or 4A090.

5B002 ''Information Security'' test, inspection and ''production'' equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
ENC: Yes for certain EI controlled equipment, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Equipment ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 5A002, 5A003, 5A004 or 5B002.b;

b. Measuring equipment ''specially designed'' to evaluate and validate the ''information security'' functions of equipment controlled by 5A002, 5A003 or 5A004, or of ''software'' controlled by 5D002.a, z.1 through z.4, or 5D002.c or z.6 through z.9.

* * * * *

5D002 ''Software'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, EI

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry (except 5D002.z).	NS Column 1.
RS applies to ''software'' controlled by 5D002.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.
EI applies to ''software'' in 5D002.a.1, a.3, .b, c.1 and c.3, for commodities or ''software'' controlled for EI reasons in ECCN 5A002, 5A004 or 5D002.	Refer to § 742.15 of the EAR. **Note:** *Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002.*

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

ENC: Yes for certain EI controlled software, except for 5D002.z. See § 740.17 of the EAR for eligibility.

NAC: Yes, for 5D002.z; N/A for all other 5D002 software.

List of Items Controlled

Related Controls: (1) After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption software that meets eligibility requirements is released from ''EI'' and ''NS'' controls. This software is designated as 5D992.c. (2) See also ECCNs 3D001.z and 4D001.z. (3) See also Note 4 to ECCN 3A090.

Related Definitions: 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security.''

Items:

a. ''Software'' ''specially designed'' or modified for the ''development,'' ''production'' or ''use'' of any of the following:

a.1. Equipment specified by 5A002 or ''software'' specified by 5D002.c.1;

a.2. Equipment specified by 5A003 or ''software'' specified by 5D002.c.2; *or*

a.3. Equipment or ''software'', as follows:

a.3.a. Equipment specified by 5A004.a or ''software'' specified by 5D002.c.3.a;

a.3.b. Equipment specified by 5A004.b or ''software'' specified by 5D002.c.3.b;

b. ''Software'' having the characteristics of a 'cryptographic activation token' specified by 5A002.b;

c. ''Software'' having the characteristics of, or performing or simulating the functions of, any of the following:

c.1. Equipment specified by 5A002.a, .c, .d or .e;

Note: *5D002.c.1 does not apply to ''software'' limited to the tasks of ''OAM'' implementing only published or commercial cryptographic standards.*

c.2. Equipment specified by 5A003; *or*

c.3. Equipment, as follows:

c.3.a. Equipment specified by 5A004.a;

c.3.b. Equipment specified by 5A004.b.

Note: *5D002.c.3.b does not apply to ''intrusion software''.*

d. [Reserved]

N.B.: *See 5D002.b for items formerly specified in 5D002.d.*

e. through y. [Reserved]

z. Other software, as follows:

z.1. Software that is described in 5D002.a.1, and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.2. Software that is described in 5D002.a.2, and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.3. Software that is described in 5D002.a.3a, and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.4. Software that is described in 5D002.a.3.b, and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.5. Software that is described in 5D002.b and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.6 Software that is described in 5D002.c.1 and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.7 Software that is described in 5D002.c.2 and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090;

z.8 Software that is described in 5D002.c.3.a and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090; *or*

z.9 Software that is described in 5D002.c.3.b and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090.

5D992 ''Information Security'' ''software,'' not controlled by 5D002, as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to ''software'' controlled by 5D992.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

NAC: Yes, for 5D992.z; N/A for all other 5D992.z software.

List of Items Controlled

Related Controls: (1) This entry does not control ''software'' designed or modified to protect against malicious computer damage, *e.g.,* viruses, where the use of ''cryptography'' is limited to authentication, digital signature and/or the decryption of data or files. (2) See also ECCNs 3D001.z and 4D001.z. (3) See also Note 4 to ECCN 3A090.

Related Definitions: N/A

Items:

a. [Reserved]

b. [Reserved]

c. ''Software'' classified as mass market encryption software in accordance with § 740.17(b) of the EAR.

d. through y. [Reserved]

z. Other software that is described in 5D992 and that also meet or exceed the performance parameters in 3D001 for 3A090 or 4D001 for 4A090.

* * * * *

5E002 ''Technology'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry (except ''technology'' for commodities controlled by 5A002.z or 5A004.z or ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities).	NS Column 1.
RS applies to ''technology'' for commodities controlled by 5A002.z or 5A004.z or ''software'' specified by 5D002 (for 5A002.z or 5A004.z commodities).	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.
EI applies to ''technology'' in 5E002.a for commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002, and to ''technology'' in 5E002.b.	Refer to § 742.15 of the EAR.

License Requirements Notes:

(1) See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

(2) When a person performs or provides technical assistance that incorporates, or otherwise draws upon, ''technology'' that was either obtained in the United States or is of U.S.-origin, then a release of the ''technology'' takes place. Such technical assistance, when rendered with the intent to aid in the ''development'' or ''production'' of encryption commodities or software that would be controlled for ''EI'' reasons under ECCN 5A002, 5A004 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S.-origin.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

ENC: Yes for certain EI controlled technology. See § 740.17 of the EAR for eligibility.

List of Items Controlled

Related Controls: See also 5E992. This entry does not control ''technology'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''technology'' related to equipment excluded from control under ECCN 5A002.

Related Definitions: N/A

Items:

a. ''Technology'' according to the General Technology Note for the ''development,'' ''production'' or ''use'' of equipment controlled by 5A002, 5A003, 5A004 or 5B002, or of ''software'' controlled by 5D002.a, z.1 through z.3, or 5D002.c, z.6 through z.8.

Note: *5E002.a does not apply to ''technology'' for items specified by 5A004.b, z.3 or z.4, 5D002.a.3.b, z.4, or 5D002.c.3.b.*

b. ''Technology'' having the characteristics of a 'cryptographic activation token' specified by 5A002.b, z.2.

Note: *5E002 includes ''information security'' technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5—Part 2.*

* * * * *

5E992 ''Information Security'' ''technology'' according to the General Technology Note, not controlled by 5E002, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
RS applies to ''technology'' for commodities controlled by 5A992.z or ''software'' controlled by 5D992.z.	To or within destinations specified in Country Groups D:1, D:4, and D:5 of supplement no. 1 to part 740 of the EAR, excluding any destination also specified in Country Groups A:5 or A:6. *See* § 742.6(a)(6)(iii) of the EAR.
AT applies to entire entry.	AT Column 1.

License Requirements Note: *See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

TSR: N/A

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items:

a. [Reserved]

b. ''Technology'', n.e.s., for the ''use'' of mass market commodities controlled by 5A992 or mass market ''software'' controlled by 5D992.

* * * * *

9A004 Space launch vehicles and ''spacecraft,'' ''spacecraft buses'', ''spacecraft payloads'', ''spacecraft'' onboard systems or equipment, terrestrial equipment, and air-launch platforms, and ''sub-orbital craft'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to 9A004.g, .u, .v, .w and .x.	NS Column 1.
AT applies to 9A004.g, .u, .v, .w, .x and .y.	AT Column 1.

License Requirement Note: *9A004.b through .f, and .h are controlled under ECCN 9A515.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

List of Items Controlled

Related Controls: (1) See also 9A104, 9A515, and 9B515. (2) See ECCNs 9E001 (''development'') and 9E002 (''production'') for technology for items controlled by this entry. (3) See USML Categories IV for the space launch vehicles and XV for other spacecraft that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

Related Definition: N/A

Items:

a. Space launch vehicles;

b. ''Spacecraft'';

c. ''Spacecraft buses'';

d. ''Spacecraft payloads'' incorporating items specified by 3A001.b.1.a.4 or z (if also described in 3A001.b.1.a.4), 3A002.g, 5A001.a.1, 5A001.b.3, 5A002.c, z.3 or z.8, 5A002.e, z.5, 6A002.a.1, 6A002.a.2, 6A002.b, 6A002.d, 6A003.b, 6A004.c, 6A004.e, 6A008.d, 6A008.e, 6A008.k, 6A008.l or 9A010.c;

e. On-board systems or equipment, specially designed for ''spacecraft'' and having any of the following functions:

e.1. 'Command and telemetry data handling';

Note: *For the purpose of 9A004.e.1, 'command and telemetry data handling' includes bus data management, storage, and processing.*

e.2. 'Payload data handling'; *or*

Note: *For the purpose of 9A004.e.2, 'payload data handling' includes payload data management, storage, and processing.*

e.3. 'Attitude and orbit control';

Note: *For the purpose of 9A004.e.3, 'attitude and orbit control' includes sensing and actuation to determine and control the position and orientation of a ''spacecraft''.*

N.B.: *Equipment specially designed for military use is* ''*subject to the ITAR*''. *See 22 CFR parts 120 through 130.*

f. Terrestrial equipment specially designed for ''spacecraft'', as follows:

f.1. Telemetry and telecommand equipment ''specially designed'' for any of the following data processing functions:

f.1.a. Telemetry data processing of frame synchronization and error corrections, for monitoring of operational status (also known as health and safe status) of the ''spacecraft bus''; *or*

f.1.b. Command data processing for formatting command data being sent to the ''spacecraft'' to control the ''spacecraft bus'';

f.2. Simulators ''specially designed'' for 'verification of operational procedures' of ''spacecraft''.

Technical Note: *For the purposes of 9A004.f.2, 'verification of operational procedures' is any of the following:*

1. Command sequence confirmation;

2. Operational training;

3. Operational rehearsals; or

4. Operational analysis.

g. ''Aircraft'' ''specially designed'' or modified to be air-launch platforms for space launch vehicles or ''sub-orbital craft''.

h. ''Sub-orbital craft''.

i. through t. [RESERVED]

u. The James Webb Space Telescope (JWST) being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration (NASA).

v. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for the James Webb Space Telescope and that are *not:*

v.1. Enumerated or controlled in the USML;

v.2. Microelectronic circuits;

v.3. Described in ECCN 7A004 or 7A104; *or*

v.4. Described in an ECCN containing ''space-qualified'' as a control criterion (*See* ECCN 9A515.x.4).

w. The International Space Station being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration.

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for the International Space Station.

y. Items that would otherwise be within the scope of ECCN 9A004.v or .x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A004.y.

* * * * *

9A515 ''Spacecraft'' and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, MT, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry, except .e and .y.	NS Column 1.
RS applies to entire entry, except .e and .y.	RS Column 1.
RS applies to 9A515.e.	RS Column 2.
RS applies to 9A515.y, except to Russia for use in, with, or for the International Space Station (ISS), including launch to the ISS.	China, Russia or Venezuela (see § 742.6(a)(7)).
MT applies to microcircuits in 9A515.d and 9A515.e.2 when ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (*e.g.,* Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). MT also applies to 9A515.h when the total impulse capacity is equal to or greater than 8.41×10^5 newton seconds.	MT Column 1.
AT applies to entire entry.	AT Column 1.

License Requirement Note: *The Commerce Country Chart is not used for determining license requirements for commodities classified in ECCN 9A515.a.1, .a.2, .a.3, .a.4, and .g. See § 742.6(a)(9), which specifies that such commodities are subject to a worldwide license requirement.*

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500

GBS: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''spacecraft'' in ECCNs 9A515.a.1, .a.2, .a.3, or .a.4, ''sub-orbital craft,'' or items in 9A515.g, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for certain 9x515 and ''600 series'' items). (2) License Exception STA may not be used if the ''spacecraft'' controlled in ECCN 9A515.a.1, .a.2, .a.3, or .a.4 contains a separable or removable propulsion system enumerated in USML Category IV(d)(2) or USML Category XV(e)(12) and designated MT. (3) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A515.

List of Items Controlled

Related Controls: Spacecraft, launch vehicles and related articles that are enumerated in the USML, and technical data (including ''software'') directly related thereto, and all services (including training) directly related to the integration of any satellite or spacecraft to a launch vehicle, including both planning and onsite support, or furnishing any assistance (including training) in the launch failure analysis or investigation for items in ECCN 9A515.a, are ''subject to the ITAR.'' All other ''spacecraft,'' as enumerated below and defined in § 772.1, are subject to the controls of this ECCN. See also ECCNs 3A001, 3A002, 3A991, 3A992, 6A002, 6A004, 6A008, and 6A998 for specific ''space-qualified'' items, 7A004 and 7A104 for star trackers, and 9A004 for the International Space Station (ISS), the James Webb Space Telescope (JWST), and ''specially designed'' ''parts'' and ''components'' therefor. See USML Category XI(c) for controls on certain ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers. See ECCN 9A610.g for pressure suits used for high altitude aircraft.

Related Definitions: 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

Items:

''Spacecraft'' and other items described in ECCN 9A515 remain subject to the EAR even if exported, reexported, or transferred (in-country) with defense articles ''subject to the ITAR'' integrated into and included therein as integral parts of the item. In all other cases, such defense articles are subject to the ITAR. For example, a 9A515.a ''spacecraft'' remains ''subject to the EAR'' even when it is exported, reexported, or transferred (in-country) with a ''hosted payload'' described in USML Category XV(e)(17) incorporated therein. In all other cases, a ''hosted payload'' performing a function described in USML Category XV(a) always remains a USML item. The removal of the defense article subject to the ITAR from the spacecraft is a retransfer under the ITAR and would require an ITAR authorization, regardless of the CCL authorization the spacecraft is exported under. Additionally, transfer of technical data regarding the defense article subject to the ITAR integrated into the spacecraft would require an ITAR authorization.

a. ''Spacecraft,'' including satellites, and space vehicles and ''sub-orbital craft,'' whether designated developmental, experimental, research or scientific, not enumerated in USML Category XV or described in ECCN 9A004.u or .w, that:

a.1. Have electro-optical remote sensing capabilities and having a clear aperture greater than 0.35 meters, but less than or equal to 0.50 meters;

a.2. Have remote sensing capabilities beyond NIR (*i.e.,* SWIR, MWIR, or LWIR);

a.3. Have radar remote sensing capabilities (*e.g.,* AESA, SAR, or ISAR) having a center frequency equal to or greater than 1.0 GHz, but less than 10.0 GHz and having a bandwidth equal to or greater than 100 MHz, but less than 300 MHz;

a.4. Provide space-based logistics, assembly, or servicing of another ''spacecraft''; *or*

a.5. Are not described in ECCN 9A515.a.1, .a.2, .a.3 or .a.4.

Note: *ECCN 9A515.a includes commercial communications satellites, remote sensing satellites, planetary rovers, planetary and interplanetary probes, in-space habitats, and ''sub-orbital craft,'' not identified in ECCN 9A004 or USML Category XV(a).*

b. Ground control systems and training simulators ''specially designed'' for telemetry, tracking, and control of the ''spacecraft'' controlled in paragraphs 9A004.u or 9A515.a.

c. [Reserved]

d. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components rated, certified, or otherwise specified or described as meeting or exceeding all the following characteristics and that are ''specially designed'' for defense articles, ''600 series'' items, or items controlled by ECCNs 9A004.v or 9A515:

d.1. A total dose of 5×10^5 Rads (Si) (5×10^3 Gy (Si));

d.2. A dose rate upset threshold of 5×10^8 Rads (Si)/sec (5×10^6 Gy (Si)/sec);

d.3. A neutron dose of 1×10^{14} n/cm^2 (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of 1×10^{-10} errors/bit/day or less, for the CREME–MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

d.5. An uncorrected single event upset sensitivity of 1×10^{-10} errors/part or less for a fluence of 1×10^7 protons/cm^2 for proton energy greater than 50 MeV.

e. Microelectronic circuits (*e.g.,* integrated circuits, microcircuits, or MOSFETs) and discrete electronic components that are rated, certified, or otherwise specified or described as meeting or exceeding the characteristics in either paragraph e.1 or e.2, AND ''specially designed'' for defense articles controlled by USML Category XV or items controlled by ECCNs 9A004.u or 9A515:

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) (1×10^3 Gy(Si)) and $< 5 \times 10^5$ Rads (Si) (5×10^3 Gy(Si)); and a single event effect (SEE) (*i.e.,* single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) ≥80 MeV-cm^2/mg; *or*

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) (5×10^3 Gy (Si)) and not described in 9A515.d.

Note 1 to 9A515.d and .e: *Application specific integrated circuits (ASICs), integrated circuits developed and produced for a specific application or function, specifically designed or modified for defense articles and not in normal commercial use are controlled by Category XI(c) of the USML regardless of characteristics.*

Note 2 to 9A515.d and .e: *See 3A001.a and .z for controls on radiation-hardened microelectronic circuits ''subject to the EAR'' that are not controlled by 9A515.d or 9A515.e.*

f. Pressure suits (*i.e.,* space suits) capable of operating at altitudes 55,000 feet above sea level.

g. Remote sensing components ''specially designed'' for ''spacecraft'' described in ECCNs 9A515.a.1 through 9A515.a.4 as follows:

g.1. Space-qualified optics (*i.e.,* lens, mirror, membrane having active properties (*e.g.,* adaptive, deformable)) with the largest lateral clear aperture dimension equal to or less than 0.35 meters; or with the largest clear aperture dimension greater than 0.35 meters but less than or equal to 0.50 meters;

g.2. Optical bench assemblies ''specially designed'' for ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft;'' *or*

g.3. Primary, secondary, or hosted payloads that perform a function of ECCN 9A515.a.1, 9A515.a.2, 9A515.a.3, or 9A515.a.4 ''spacecraft.''

h. Spacecraft thrusters using bi-propellants or mono-propellants that provide thrust equal to or less than 150 lbf (*i.e.,* 667.23 N) vacuum thrust.

i. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing ''space-qualified'' as a control criterion (*i.e.,* 3A001.b.1, 3A001.e.4 or .z, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 and .z for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 and .z for controls on these items); *or*

x.7. Elsewhere specified in ECCN 9A515.y.

Note to 9A515.x: *''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.*

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e;

y.2. Space grade or for spacecraft applications thermistors;

y.3. Space grade or for spacecraft applications RF microwave bandpass ceramic filters (Dielectric Resonator Bandpass Filters);

y.4. Space grade or for spacecraft applications hall effect sensors;

y.5. Space grade or for spacecraft applications subminiature (SMA and SMP) plugs and connectors, TNC plugs and cable and connector assemblies with SMA plugs and connectors; *and*

y.6. Space grade or for spacecraft applications flight cable assemblies.

* * * * *

■ 39. Effective November 17, 2023, supplement no. 6 to part 774 is amended by revising paragraphs (3)(i) introductory text, (3)(ii) introductory text, and paragraphs (3)(iv) and (v) to read as follows:

Supplement No. 6 to Part 774—Sensitive List

* * * * *

(3) Category 3

(i) 3A001.b.2 (including those described under 3A001.b.2 that are controlled by 3A001.z)—''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are any of the following:

* * * * *

(ii) 3A001.b.3 (including those described under 3A001.b.3 that are controlled by 3A001.z)—Discrete microwave transistors that are any of the following:

* * * * *

(iv) 3D001—''Software'' ''specially designed'' for the ''development'' or ''production'' of equipment controlled under 3A001.b.2, 3A001.b.3, equipment described under 3A001.b.2 or 3A001.b.3 that are controlled under 3A001.z, 3A002.g.1, and equipment described under 3A002.g.2 that are controlled under 3A002.z.

(v) 3E001—''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment controlled under 3A001.b.2, 3A001.b.3, equipment described under 3A001.b.2 or 3A001.b.3 that are controlled under 3A001.z, 3A002.g.1, and equipment described under 3A002.g.2 that are controlled under 3A002.z.

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–23055 Filed 10–18–23; 8:45 am]

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FEDERAL REGISTER

Vol. 88 Wednesday,
No. 205 October 25, 2023

Part IV

The President

Federal Register
Vol. 88, No. 205
Wednesday, October 25, 2023

Presidential Documents

Title 3—

The President

Presidential Determination No. 2023–13 of September 29, 2023

Presidential Determination on Refugee Admissions for Fiscal Year 2024

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, in accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 125,000 refugees to the United States during Fiscal Year (FY) 2024 is justified by humanitarian concerns or is otherwise in the national interest.

The admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations:

Africa	30,000–50,000
East Asia	10,000–20,000
Europe and Central Asia	2,000–3,000
Latin America/Caribbean	35,000–50,000
Near East/South Asia	30,000–45,000

The above allocation ranges are intended to provide flexibility as needs arise, but the total admissions among all of the regions may not exceed 125,000. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to transfer unused admissions allocated to a particular region to one or more other regions, if there is a need for greater admissions for the region or regions to which the admissions are being transferred.

Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 260l(b)(2)), I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

Consistent with section 10l(a)(42) of the Act (8 U.S.C. 1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2024, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

1. Persons in Cuba;

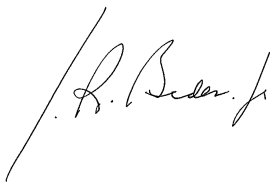
2. Persons in Eurasia and the Baltics;

3. Persons in Iraq;

4. Persons in El Salvador, Guatemala, and Honduras; and

5. In certain circumstances, persons identified by a United States Embassy in any location.

You are authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 29, 2023

[FR Doc. 2023–23733
Filed 10–24–23; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2023–14 of September 29, 2023

Presidential Determination With Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) (the ''Act''), as amended, I hereby determine as follows:

As provided for in section 110(d)(1)(A)(i) of the Act, that the United States will not provide nonhumanitarian, nontrade-related assistance to the Governments of Afghanistan, Burma, Chad, Equatorial Guinea, Guinea-Bissau, Iran, the People's Republic of China (PRC), and South Sudan for Fiscal Year (FY) 2024 until such governments comply with the Act's minimum standards or make significant efforts to bring themselves into compliance with the minimum standards;

As provided for in section 110(d)(1)(A)(ii) of the Act, that the United States will not provide nonhumanitarian, nontrade-related assistance to, or allow funding for participation in educational and cultural exchange programs by officials or employees of, the Governments of Belarus, Cuba, the Democratic People's Republic of Korea (DPRK), Eritrea, Macau (Special Administrative Region of the PRC), Nicaragua, Russia, and Syria for FY 2024 until such governments comply with the Act's minimum standards or make significant efforts to bring themselves into compliance with the minimum standards;

As provided for in section 110(d)(1)(B) of the Act, I hereby instruct the United States Executive Director of each multilateral development bank, as defined in the Act, and of the International Monetary Fund to vote against and use best efforts to deny any loan or other utilization of the funds of the respective institution (other than for humanitarian assistance; for trade-related assistance; or for development assistance that directly addresses basic human needs, is not administered by the government of such country, and confers no benefit to that government) for the Governments of Belarus, Burma, Cuba, the DPRK, Eritrea, Iran, Macau (Special Administrative Region of the PRC), Nicaragua, the PRC, Russia, South Sudan, and Syria for FY 2024 until such governments comply with the Act's minimum standards or make significant efforts to bring themselves into compliance with the minimum standards;

Consistent with section 110(d)(4) of the Act, I determine that the provision of all programs, projects, activities, and funding for educational and cultural exchange programs described in sections 110(d)(1)(A) and 110(d)(1)(B) of the Act to Algeria, Cambodia, Djibouti, Papua New Guinea, Turkmenistan, and Venezuela would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that providing the assistance described in section 110(d)(1)(B) of the Act to Afghanistan, Chad, Equatorial Guinea, and Guinea-Bissau would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, I determine that a partial waiver with respect to Belarus, Eritrea, Macau (Special Administrative Region

of the PRC), and Russia to allow funding for educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, with respect to Afghanistan, I determine that a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act to allow for Economic Support Fund (ESF) and Global Health Programs (GHP) assistance would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, with respect to Chad, I determine that a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act to allow for Development Assistance (DA), ESF, and GHP assistance would promote the purposes of the Act or is otherwise in the national interest of the United States;

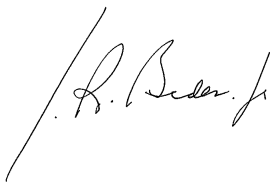
Consistent with section 110(d)(4) of the Act, with respect to Equatorial Guinea, I determine that a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act to allow for International Military Education and Training (IMET), Peacekeeping Operations (PKO), DA, ESF, and GHP assistance would promote the purposes of the Act or is otherwise in the national interest of the United States;

Consistent with section 110(d)(4) of the Act, with respect to Guinea-Bissau, I determine that a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act to allow for IMET, PKO, DA, ESF, and GHP assistance would promote the purposes of the Act or is otherwise in the national interest of the United States; and

Consistent with section 110(d)(4) of the Act, with respect to South Sudan, I determine that a partial waiver of the restriction described in section 110(d)(1)(A)(i) of the Act to allow for GHP assistance would promote the purposes of the Act or is otherwise in the national interest of the United States.

In addition, with respect to the Governments of Curacao and Sint Maarten, consistent with the United States Government's firm stand against human trafficking, and until such governments take steps consistent with compliance with the minimum standards of the Act or make significant efforts to do so, I hereby: (i) direct that executive departments and agencies shall not provide nonhumanitarian, nontrade-related foreign assistance, as described in section 110(d)(1)(A) of the Act, to the Governments of Curacao and Sint Maarten; (ii) instruct the United States Executive Director of each multilateral development bank, as defined in the Act, and of the International Monetary Fund to vote against and use best efforts to deny any loan or other utilization of the funds of the respective institution (other than for humanitarian assistance, for trade-related assistance, or for development assistance that directly addresses basic human needs, is not administered by such government, and confers no benefit to that government) to Curacao and Sint Maarten, as described in section 110(d)(1)(B) of the Act; and (iii) direct that funding for participation by officials or employees of the Governments of Curacao and Sint Maarten in educational and cultural exchange programs shall continue to be permitted in FY 2024, consistent with the foreign policy and all applicable laws of the United States.

You are authorized and directed to submit this determination, the certification required by section 110(e) of the Act, and the Memorandum of Justification, on which I have relied, to the Congress, and to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 29, 2023

[FR Doc. 2023–23736
Filed 10–24–23; 11:15 am]
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