

The EPA will additionally identify and address environmental justice concerns by conducting outreach after signature of this proposed rule. The EPA will reach out to tribes through a monthly policy call and with consultation letters. The EPA will address this rule during the monthly Environmental Justice call for communities burdened by disproportionate environmental impacts. The information supporting this Executive Order review is contained in section V.F of this preamble.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 502, 538, and 552

[GSAR Case 2020-G510; Docket No. GSA-GSAR-2023-0025; Sequence No. 1]

RIN 3090-AK20

General Services Administration Acquisition Regulation; Federal Supply Schedule Economic Price Adjustment

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the General Services Administration Acquisition Regulations to standardize and simplify the Multiple Award Schedule (Schedule) clauses for economic price adjustments. This rule removes certain economic price adjustment requirements within these clauses to better align with commercial standards and practices.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before January 16, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020-G510 to: <https://www.regulations.gov> via the Federal eRulemaking portal by searching for "GSAR Case 2020-G510". Select the link "Comment Now" that corresponds with GSAR Case 2020-

G510. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2020-G510" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite GSAR Case 2020-G510, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential 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: For clarification of content, contact Mr. Thomas O'Linn, Procurement Analyst at gsarpolicy@gsa.gov or 202-445-0390. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at GSARegSec@gsa.gov or 202-501-4755. Please cite GSAR Case 2020-G510.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) conducts routine reviews of its acquisition regulations and acquisition policies and procedures. The review indicated a need to standardize and simplify the Schedule clause for economic price adjustments.

The Schedule program, also known as the Federal Supply Schedule (FSS) program, establishes long-term governmentwide contracts with commercial companies. Schedule contracts routinely last up to 20 years and are issued as fixed price with economic price adjustment (EPA) Indefinite Delivery Indefinite Quantity (IDIQ) contracts. Schedule contracts provide access to commercial products, services, and solutions at fair and reasonable pricing to the Federal Government and other authorized customers (e.g., state and local governments).

The use of EPA provides for upward and downward revision of contract pricing upon the occurrence of specified conditions over the anticipated 20 year contract period of performance. The Schedule program has a long history of providing the ability for Schedule contractors to submit EPA requests (e.g., see 47 FR 50242 dated November 5, 1982).

Currently, Schedule contracts contain at least one of the following EPA clauses

(i.e., a Schedule contract may include more than one EPA clause based on their offering and participation in Transactional Data Reporting (TDR)): (1) Alternate I of GSAR clause 552.216-70, Economic Price Adjustment-FSS Multiple Award Schedule Contracts; (2) an authorized deviation of GSAR clause 552.216-70; (3) clause I-FSS-969, Economic Price Adjustment-FSS Multiple Award Schedule; or (4) an Alternate to clause I-FSS-969. The primary focus of these EPA clauses is the establishment of the procedures, including, but not limited to specific procedural limits (e.g., timing and frequency) around the submission of EPA price increase requests. In terms of price decrease requests, all four clauses require such requests to be handled in accordance with GSAR clause 552.238-81, Price Reductions. Altogether, for the most part these four Schedule EPA clauses are very similar, with only minor differences, most of which are related to the EPA mechanism(s) proposed by the contractor (e.g., annual fixed increases or increases based on their published or publicly available commercial price list) and the applicability of TDR.

In March 2022, in response to the highest level of inflation in over 40 years as well as other factors (e.g., supply chain disruptions), GSA issued Acquisition Letter MV-22-02 to provide a temporary moratorium on the enforcement of certain procedural limits contained in the Schedule EPA clauses. The moratorium relaxes the limits on the frequency, timing, and number of EPA price increase requests.

Since the issuance of Acquisition Letter MV-22-02, the Schedule program has seen benefits. The relaxing of these procedural limits has provided industry Schedule partners with greater flexibility and agility in response to market changes and economic conditions that impact their Schedule pricing. This flexibility has increased their ability to support federal customers in acquiring critically needed products, services, and solutions through a single contracting action. In the absence of this flexibility, they would likely have chosen not to respond to order-level solicitations and/or requested the removal of the items from their Schedule contract to avoid selling them at a loss. The loss of such items under such conditions, increases the administrative costs and time for federal agencies and other customers in meeting their needs.

The positive results of Acquisition Letter MV-22-02 underscore the need for the Schedule program to continually evolve and provide a viable and

competitive vendor base for needed products, services, and solutions at competitive prices. The absence of items from the competitive marketplace increases the administrative cost for the Government, customers, and Schedule contractors; reduces the efficacy of the Schedule program; and undercuts objectives to support small business especially in underserved communities.

GSA is seeking to standardize and simplify the Schedule clauses for EPA. The revisions will result in the consolidation of the four existing Schedule EPA clauses into a single Schedule EPA clause. The revisions will also remove several procedural limits contained in these clauses to better align with commercial standards and practices. GSA anticipates these changes will increase the number and extent of offerings available through the Schedule program, improve customer satisfaction by ensuring needed products, services, and solutions are initially offered and are not removed from the Schedule program, and reduce administrative costs on Schedule contractors, particularly small businesses and new entrants.

II. Discussion and Analysis

This proposed rule amends the GSAR to standardize and simplify the Schedule clauses related to economic price adjustments. A summary of the revisions is as follows:

A. GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, is being revised, renumbered, and renamed 552.238–118, Economic Price Adjustment—Federal Supply Schedule Contracts. The clause is being renumbered to be consistent with the numbering used for Schedule provisions and clauses. The current clause number reflects the clause being located in GSAR part 516. This is inconsistent with the current practice of locating Schedule provisions and clauses within GSAR part 538, specifically section 538.273. The clause is being renamed to remove the words “Multiple Award Schedule” since it is duplicative of the acronym “FSS” that is already included in the clause title. The clause title is also being renamed in order to spell out the acronym “FSS”. Spelling out of the acronym “FSS” is consistent with the current practice of using the words “Federal Supply Schedule” in GSAR provision and clause titles where appropriate.

The revisions to the clause itself provide for the: (1) standardization and simplification of existing Schedule EPA requirements; (2) retention of the Schedule Contracting Officer’s authority

to reject, accept, or partially accept an EPA request; (3) creation of a definition for “economic price adjustment method” for the purpose of formalizing within resultant contracts offerors’ proposed EPA mechanism(s), the applicable pricing subject to EPA, and any other agreed upon requirements; (4) clarification on what is not covered by an EPA request; (5) ability for the EPA method to be revised via mutual agreement during contract performance; and (6) establishment of a single consolidated Schedule EPA clause.

Currently, the Schedule solicitation contains the following provision: SCP–FSS–001, Instructions Applicable to All Offerors. Paragraph (i)(3)(v) of this provision requests offerors propose an EPA mechanism. The EPA mechanisms available within the Schedule solicitation for offerors to choose from are: a published or publicly-available commercial price list; a fixed annual escalation rate; and relevant market indicator (*e.g.*, the Bureau of Labor Statistics Employment Cost Index (ECI)). Paragraph (c) of the clause I–FSS–969 also includes the ability to determine an appropriate mechanism in response to unforeseeable major changes in market conditions.

Schedule contracts currently contain at least one of the following clauses: (1) Alternate I of GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts; (2) an authorized deviation of GSAR clause 552.216–70; (3) clause I–FSS–969, Economic Price Adjustment—FSS Multiple Award Schedule; or (4) an Alternate to clause I–FSS–969. The incorporation of one or more of these clauses into a Schedule contract is dependent on the EPA mechanism(s) proposed by the offeror and whether the offeror elected to participate in TDR. For example, the authorized deviation to GSAR clause 552.216–70 applies to Schedule contracts subject to TDR that use published or publicly-available commercial price lists as the EPA mechanism. These four Schedule EPA clauses include essentially the same requirements (*e.g.*, timing, number, and frequency of EPA price increase requests), with only minor differences, most of which are related to the clause prescription (*i.e.*, type of EPA mechanism selected by the contractor and applicability of TDR).

In consideration of the above existing requirements, the revised clause seeks to consolidate the four existing EPA clauses into a single clause. The new clause maintains GSA’s responsibility to: ensure schedules operate at the lowest overall cost alternative and feature fair and reasonable pricing at the

Schedule level throughout contract performance; review, process, and, if necessary, negotiate EPA requests. This could mean accepting, rejecting, or partially accepting EPA requests. For example, paragraph (f) of the revised clause maintains the Schedule contracting officer’s options in response to an EPA request. Currently, this requirement is found within each of the four EPA clauses (*e.g.*, see paragraph (f) of clause I–FSS–969).

The revised clause moves GSA closer to the commercial marketplace and provides greater flexibility and agility in terms of responding to market changes, economic conditions, and Government/customer requirements. For example, due to the inflexibility of the existing Schedule EPA clauses some Schedule contractors have removed items from their Schedule contract to avoid selling those items at a loss. The absence of such items has an unnecessary negative impact on the Schedule program. The lack of items on the Schedule program directly impacts competition and the availability of needed items; increases administrative costs to the Government, customers, and Schedule contractors; reduces the efficacy of the Schedule program; and undercuts the objectives to support small businesses and new entrants.

B. Alternate I of GSAR clause 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, is being deleted in its entirety. The Alternate is being deleted because it is no longer necessary as a result of the aforementioned revisions. The newly created GSAR clause 552.238–118, Economic Price Adjustment—Federal Supply Schedule Contracts, addresses Schedule EPA requirements.

C. Section 538.273, FSS solicitation provisions and contract clauses, is being revised to provide for the prescription of the newly created GSAR clause 552.238–118, Economic Price Adjustment—Federal Supply Schedule Contracts. Section 538.273 is the appropriate location for the prescription of this new clause because this is the section that provides the prescription for Schedule provisions and clauses.

D. GSAR clause 552.238–115, Special Ordering Procedures for the Acquisition of Order-Level Materials, is being revised to update paragraph (d)(10)(i) from “552.216–70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts” to “552.238–118, Economic Price Adjustment—Federal Supply Schedule Contracts.” This revision is appropriate because 552.238–118 is the GSAR clause that is

replacing the GSAR clause 552.216–70 under the proposed revisions.

E. Section 502.101 Definitions, is being revised to add the definition for EPA method.

F. The table in section 501.106 OMB Approval under the Paperwork Reduction Act, is being revised to reflect the proposed revisions and existing requirements not currently shown in the table.

III. Expected Impact of the Rule

GSA believes that these changes benefit the Schedule program as a whole. For example, GSA anticipates that these changes will increase the number and extent of offerings available through the Schedule program, improve customer satisfaction/reduce customer cost by ensuring needed products, services, and solutions are not removed from the Schedule program due to market volatility, and reduce administrative costs on Schedule contractors, particularly small businesses and new entrants.

GSA receives hundreds of modification requests each month from contractors to remove items from their Schedule contracts or declined orders due to price variability in the commercial market. By statute, the procedures for the Schedule program are competitive so long as they are open to all and contracts and orders results in the lowest overall cost alternative. GSA anticipates this rule will help it ensure customers experience the lowest overall cost alternative on their orders by maximizing the chance that full solutions are available on the Schedule contract, thus minimizing the need to conduct multiple separate acquisitions to fulfill a requirement.

Currently, Schedule contracts include at least one of the following four clauses related to the submission and processing of EPA requests during contract performance: (1) an authorized deviation to GSAR clause 552.216–70; (2) Alternate I of GSAR clause 552.216–70; (3) clause I–FSS–969; or (4) an Alternate of clause I–FSS–969. These changes standardize and simplify the EPA requirements contained in these four clauses. These changes will result in the consolidation of these clauses into a single Schedule EPA clause. These changes do not alter the way Schedule contractors conduct business, or their ability to submit an EPA request.

The qualitative anticipated benefits include, but are not limited to, the creation of a single standardized Schedule EPA clause; greater flexibility around EPA requests; providing clarity around EPA within the Schedule

program; providing a connection between the Schedule solicitation and resultant contracts; and greater flexibility and agility for purposes of responding to changing conditions.

GSA anticipates the quantitative benefits to be related to improved regulatory familiarization. GSA calculates the estimated total cost for Schedule contractors to familiarize themselves with existing EPA requirements as \$3,251,640 (*i.e.*, 3 hours * \$77.42¹ (GS–12 Step 5 base pay plus “Rest of US Locality Pay” plus “Fringe”) * 14,000 approximate number of current Schedule contractors)). After these revisions: GSA estimates the total cost as \$2,709,700 (*i.e.*, 2.5 hours * \$77.42 (GS–12 Step 5 base pay plus “Rest of US Locality Pay” plus “Fringe”) * 14,000 approximate number of current Schedule contractors)). Resulting in a reduction in estimated total cost of \$541,940.

IV. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) 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 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined that this rule is not a significant regulatory action, and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Regulatory Flexibility Act

GSA does not expect this proposed rule 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 rule is to standardize and simplify existing EPA requirements related to Schedules (*e.g.*, revise GSAR clause 552.216–70,

¹ 2023 Rest of US, 12 Step 5 × 2.0 fringe = \$77.42; the rate is adjusted upward by 100% to adjust for overhead and benefits.

Economic Price Adjustment-FSS Multiple Award Schedule Contracts). The underlying purpose of the changed text remains the same (*i.e.*, supporting the submission and processing of EPA requests), and therefore any burden would have been identified previously. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

The Regulatory Secretariat Division will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2020–G510), in correspondence.

The analysis is summarized as follows:

The objective of the rule is to standardize and simplify the clauses for Schedule related to EPA. These revisions will result in the consolidation of the four existing Schedule clauses into a single Schedule EPA clause. These revisions also remove certain procedural limits contained in these clauses to better align with commercial standards and practices. GSA anticipates that these changes will increase the number and extent of offerings available through the Schedule program, improve customer satisfaction/reduce customer costs by ensuring needed products, services, and solutions are not removed from the Schedule, and reduce administrative costs on Schedule contractors, particularly small businesses and new entrants.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the Schedule program.

The rule applies to both large and small businesses, which are awarded Schedule contracts. Information obtained from FAS as well as the recent renewal of Information Collections 3090–0235 and 3090–0306 were used as the basis for estimating the number of Schedule contractors that this rule may impact. For Fiscal Year 2022 there were approximately 14,000 Schedule contractors, of which over 12,000 (85 percent) were small business entities. In addition, according to the recent renewal of Information Collections 3090–0235 and 3090–0306, GSA processes approximately 2,561 EPA requests annually. GSA anticipates this rule will not significantly impact this number.

The rule does not implement new or changed reporting, recordkeeping, or other

compliance requirements for Schedule contracts. The rule merely updates and clarifies existing EPA requirements currently used in Schedule contracts.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors because the requirements prescribed in existing Schedule EPA clauses are already being followed. The rule merely updates and clarifies these existing requirements so as to reduce burden for both the government and contractors as it relates to EPA within Schedule contracts.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 3501) does apply; however, these changes do not impose additional information collection requirements to the burden previously approved under the Office of Management and Budget (OMB) Control Number 3090-0235, titled: Federal Supply Schedule Pricing Disclosures and Sales Reporting and OMB Control Number 3090-0306, titled: Transactional Data Reporting. Both OMB information collections, however, will be updated to reflect the change in the clause title and number from 552.216-70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, to 552.238-118, Economic Price Adjustment—Federal Supply Schedule Contracts.

List of Subjects in 48 CFR Parts 501, 502, 538, and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 501, 502, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 502, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. In section 501.106 amend Table 1 by—

- a. Revising the entry for “516.506”;
- b. Removing the entry for “552.216-70 and its corresponding OMB Control No.; and
- c. Adding in numerical order, entries for “552.238-83” and “552.238-118”.

The revision and additions read as follows:

	GSAR reference	OMB control No.
*	*	*
516.506	3090-0248, 3090-0306.
*	*	*
552.238-83	3090-0235, 3090-0306.
*	*	*
552.238-118	3090-0235.
*	*	*

PART 502—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 502.101 by adding in alphabetical order, the definition of “Economic Price Adjustment (EPA) Method” to read as follows:

502.101 Definitions.

Economic Price Adjustment (EPA) method means the agreed upon procedure by which pricing may be adjusted throughout the contract period to include, but not limited to, the mechanism(s) to be used to adjust pricing (e.g., adjustments based on established pricing), the pricing subject to adjustment, and any other requirements (e.g., timing, frequency, limits on increases).

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PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 4. Amend section 538.273 by adding paragraph (d)(38) to read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(d) * * *
 (38) 552.238-118, Economic Price Adjustment—Federal Supply Schedule Contracts. Use in Federal Supply Schedule solicitations and contracts.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.216-70 [Removed]

- 5. Remove section 552.216-70.
- 6. Amend section 552.238-115 by revising the date of the clause and paragraph (d)(10)(i) to read as follows:

552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials.

* * * * *

Special Ordering Procedures for the Acquisition of Order-Level Materials (DATE)

* * * * *

(d) * * *
 (10) * * *

(i) 552.238-118, Economic Price Adjustment—Federal Supply Schedule Contracts.

* * * * *

■ 7. Add section 552.238-118 to read as follows:

552.238-118 Economic Price Adjustment—Federal Supply Schedule Contracts.

As prescribed in 538.273(d), insert the following clause:

552.238-118 Economic Price Adjustment—Federal Supply Schedule Contracts (DATE)

(a) *Definition.*
Economic price adjustment method, as used in this clause, means the agreed upon procedures by which pricing may be adjusted throughout the contract period to include, but not limited to, the mechanism(s) to be used to adjust pricing (e.g., adjustments based on established pricing), the pricing subject to adjustment, and any other requirements (e.g., timing, frequency, limits on increases).

(b) *General.* This contract provides for economic price adjustment (EPA) to contract pricing based on the established EPA method. EPA provides for the increase and decrease to stated contract pricing upon the occurrence of specified conditions described in the EPA method, such as market index changes or unforeseeable significant changes in market conditions.

(c) *Exceptions.* This clause does not cover—

(1) Adjustments based on statute, Executive Order, or regulation (e.g., Service Contract Labor Standards (41 U.S.C. chapter 67) and AbilityOne procurements (FAR subpart 8.7));

(2) Adjustments based on a change clause (e.g., paragraph (c) of GSAR clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services (FAR DEVIATION 52.212-4));

(3) Price reductions made under GSAR clause 552.238-81, Price Reductions;

(4) Adjustments based on GSAR clause 552.238-117, Price Adjustment-Failure to Provide Accurate Information; and

(5) Adjustments based on a contract clause that authorizes an adjustment based on specified actions or conditions.

(d) *Economic price adjustment method.* The EPA method may be revised through mutual agreement of the parties. In the event of a conflict between the EPA method and this contract, the contract shall control.

(e) *Submission requirements.* The Contractor shall submit EPA requests to the Federal Supply Schedule (FSS) Contracting Officer pursuant to the EPA method. EPA requests shall fully conform to the requirements of the EPA method and include sufficient information to support the request.

The FSS Contracting Officer may request additional information from the Contractor.

(f) *Contracting Officer responsibilities.* The FSS Contracting Officer will—

(1) Review the EPA request to ensure conformance with the EPA method,

(2) Make a determination. The FSS Contracting Officer may use any information (e.g., market research) deemed necessary to support their determination. The FSS Contracting Officer may determine to—

(i) Accept the EPA request either in whole or in part,

(ii) Reject the EPA request either in whole or in part, or

(iii) Take any other action deemed to be in the best interest of the Government (e.g., negotiate a more favorable EPA).

(3) Notify the Contractor of their determination, and

(4) Modify the contract, as applicable, to reflect the determination. Contract items that need to be removed from the contract as a result of rejection or an inability to reach agreement are to be removed in accordance with 552.238–79, Cancellation.

(g) *Effective date.* EPA requests approved by the FSS Contracting Officer under this clause shall apply to orders issued on or after the effective date of the contract modification. Blanket Purchase Agreements (BPAs) may be modified by the ordering agency in accordance with the terms and conditions of the BPA.

(h) *Update of contract pricing and catalog data.* The Contractor shall update its FSS pricing and any other FSS catalog data in accordance with the terms and conditions of this contract.

(End of clause)

[FR Doc. 2023–25221 Filed 11–15–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–BK85

Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program

AGENCY: International Affairs, Trade, and Commerce, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: The National Marine Fisheries Service (NMFS) withdraws the Seafood Import Monitoring Program (SIMP) proposed rule, which was published in the **Federal Register** on December 28, 2022. The SIMP proposed rule intended to add species to SIMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. In addition, the proposed rule

would have amended SIMP regulations to clarify the responsibilities and definitions, and make other necessary administrative modernizations. In light of the extensive public comments received regarding the December 2022 proposed rule, NMFS has decided to conduct a comprehensive program review in order to strengthen the impact and effectiveness of SIMP. Critical aspects of that review will include better defining the problem that we are working to address and establishing clear, achievable goals through constructive engagement with our stakeholders. Comments received on the December 2022 proposed rule will also be taken into consideration as part of the review. While NMFS conducts this comprehensive review, SIMP will continue to operate in its current form, all existing requirements remain in force, and the list of priority species currently subject to SIMP requirements remains unchanged. In addition, NMFS will continue to support industry and other stakeholders in SIMP compliance during the review.

DATES: The proposed rule published on December 28, 2022 (87 FR 79836) is withdrawn on November 16, 2023.

FOR FURTHER INFORMATION CONTACT:

Rachael Confair, Office of International Affairs, Trade, and Commerce, NMFS, 301–427–8361, rachael.confair@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2022, NMFS issued its SIMP proposed rule (85 FR 58321). The proposed rule was initially open for 90 days of public comment, and this period was extended for an additional 30 days. It included a proposal to incorporate additional priority species in SIMP, as well as to make other administrative changes.

SIMP has been in effect for more than 1,100 unique species, representing 13 species groups, for approximately 4 years. SIMP was established as a screening tool to identify and deter products derived from Illegal, Unreported, and Unregulated (IUU) fishing, as well as misrepresented seafood from entering the U.S. market. The information required under SIMP can lead to the interdiction of IUU fish and fish products as they enter the United States, but it was not designed to achieve that outcome, nor has that been typically how it functions. It is primarily a permitting, reporting and recordkeeping program that conducts post-entry audits, and in some cases, enforcement inspections and, when

potentially illegal imports are identified, follow-up investigations.

Program Review

It is clear, based on the comments received, combined with feedback received over the past few years, that this is the right time to review SIMP. There are a diverse array of viewpoints, and sometimes unrealistic expectations, on what SIMP should or could be doing. In order to strengthen our impact and effectiveness, it is important to better define our goals, and then identify clear mechanisms to achieve them.

As an integral part of this undertaking, NMFS will actively seek engagement and input from all relevant stakeholder groups, including industry, non-governmental organizations, other Federal agencies, congressional representatives, and foreign governments. NMFS intends to bring together an informal interagency working group to review our approach and identify possible strategies for increasing the effectiveness and impact of SIMP on countering IUU fishing and seafood fraud. This collaborative effort will also explore alternative or complementary approaches available to address seafood traceability for NMFS and its interagency partners. Some questions that NMFS will consider during the review are:

1. *Determine the goals:* What is the problem or problems that SIMP was designed to address? Are there changes that should be made to the goals? What do we want to achieve and what is the best way to do it?

2. *Determine whether the goals are achievable:* Are the goals feasible? What does success look like? Are there limitations of resources, technology, or other elements that must be considered in determining whether the goals are achievable?

3. *Determine what is needed to achieve the goals:* Are there additional authorities needed for NOAA or other agencies to achieve these goals? What new tools are needed to accomplish this goal? Are there existing tools that could be used more effectively? How can we use a whole-of-government approach to achieve these goals?

NMFS will review and consider all aspects of the Program, including the initial constraints that shaped SIMP's original framework. NMFS will use both the public comments received and internal and external program assessments to refine the areas of focus. NMFS also plans to conduct public listening sessions to solicit written and oral feedback from public stakeholders, as well as participating in other