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Presidential Documents

Title 3—

The President

Proclamation 10456 of September 30, 2022

Cybersecurity Awareness Month, 2022

By the President of the United States of America

A Proclamation

During Cybersecurity Awareness Month, we highlight the importance of safeguarding our Nation's critical infrastructure from malicious cyber activity and protecting citizens and businesses from ransomware and other attacks. We also raise awareness about the simple steps Americans can take to secure their sensitive data and stay safe online.

Cyberattacks affect our day-to-day lives, our economy, and our national security. By destroying, corrupting, or stealing information from our computer systems and networks, they can impact electric grids and fuel pipelines, hospitals and police departments, businesses and schools, and many other critical services that Americans trust and rely on every day. That is why my Administration started working immediately to shield our country and improve our defenses against cyberattacks.

Last year, I signed an Executive Order to modernize the Federal Government's cybersecurity defenses and create a standard playbook for Federal agencies to better identify and mitigate cyber threats and to respond quickly and effectively when they are attacked. It also improves Federal information security by establishing robust security standards for software purchased by the Government, which in turn raises the standard of cybersecurity in software products sold to the American people. My Administration is using the enormous purchasing power of the Federal Government to move the market standard to better protect Americans.

However, Government cannot meet our cyber resilience goals alone. The private sector owns and operates much of our Nation's critical infrastructure, and my Administration is committed to partnering with private industry to keep the public safe. We have required minimum cybersecurity standards for vital sectors of the American economy, including new security directives issued by the Transportation Security Administration to strengthen our transportation sector and associated infrastructure. Through the Bipartisan Infrastructure Law, we are investing in cybersecurity as a critical component in everything we build, from bridges to the electrical grid. We will also continue exchanging information with private industry about cyber threats so they can keep strengthening their defenses and ensure that the critical services they provide to the American people stay up and running.

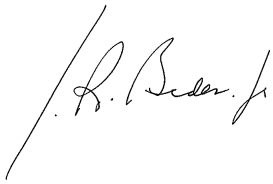
The challenges before us require urgency and cooperation around the globe. That is why we are also joining with our international partners to hold malicious cyber actors accountable for their disruptive and destabilizing cyber-attacks and to make it harder for them to conduct damaging activities. My Administration's international Counter-Ransomware Initiative brings together more than 30 countries spanning 13 time-zones to disrupt malicious cyber activity around the world.

Cybersecurity is not limited to Government or critical infrastructure. Hackers target Americans every day, and cybersecurity is about protecting the American people and the services we rely on. This month, I encourage all Americans to increase their cybersecurity at home, at work, and in schools by taking steps such as enabling multi-factor authentication, using a trusted password manager and strong passwords, recognizing and reporting phishing,

and updating their software regularly. As the threat of malicious cyber activities grows, we must all do our part to keep our Nation safe and secure.

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 2022 as Cybersecurity Awareness Month. I call upon the people, businesses, and institutions of the United States to recognize the importance of cybersecurity, to take action to better protect yourselves against cyber threats, and to observe Cybersecurity Awareness Month in support of our national security and resilience.

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



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Presidential Documents

Proclamation 10457 of September 30, 2022

National Arts and Humanities Month, 2022

By the President of the United States of America

A Proclamation

For centuries, American arts and humanities have been a beacon of light and understanding, recording our history and advancing new ways of thinking. This National Arts and Humanities month, we celebrate our Nation's visionary artists, scholars, and creators whose work touches and reveals the soul of America.

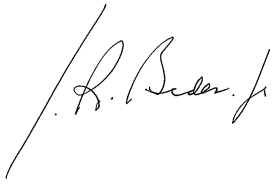
My Administration is committed to making the arts and humanities more accessible to people of every age and background, uplifting more voices, inspiring new generations, and showing the full power of our example as a great Nation. We have invested hundreds of millions of dollars in strengthening the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH), and our American Rescue Plan allocated over a billion more to help museums, libraries, theaters, concert halls, and other venues recover from the pandemic.

This critical support comes on top of a historic Executive Order I signed this week to promote the arts, humanities, and museum and library services. The order re-establishes the President's Committee on the Arts and Humanities, and directs cooperation among Federal agencies and offices to strengthen our Nation's health, economy, equity, and civic life through these disciplines. Additionally, I am proud to have appointed Dr. Maria Rosario Jackson to chair the NEA, the first African American and Mexican American to head the agency, and Shelly C. Lowe to chair the NEH, the first Native American in that role. Together, we will keep working to support artists, scholars, and leaders who look like America and will help tell our full story as a Nation.

The NEH charter says it best: Democracy demands wisdom. The steps we are taking this month will support American creators and communities, foster new understanding, and inspire us all to tackle our toughest challenges and keep pushing forward to form a more perfect Union.

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 2022 as National Arts and Humanities Month. I call on the people of the United States to observe this month with appropriate programs, ceremonies, and celebrations.

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



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Presidential Documents

Proclamation 10458 of September 30, 2022

National Breast Cancer Awareness Month, 2022

By the President of the United States of America

A Proclamation

Far too many Americans face the overwhelming shock of a breast cancer diagnosis. They are flooded with new information, worried about loved ones, and at times unable to afford treatment—all the while staring down life's toughest questions. During National Breast Cancer Awareness Month, we rededicate ourselves to supporting patients and their families, boosting access to care, and raising awareness about the life-saving importance of early screening. We honor all those we have lost to this terrible disease and celebrate the courageous survivors and advocates fighting to beat it, along with the loved ones and medical providers who have their backs every day.

Cancer changes everyone and every family it touches, including ours—and breast cancer is the second most common form of the disease among women in the United States. One in eight women will be diagnosed in their lifetimes, including an expected 290,000 just this year. Fortunately, we are making progress in our fight to end cancer as we know it. The investments our Nation has made in research and screening technologies have been transformative. Groundbreaking immunotherapies and other new treatments have changed the prognosis for so many, and early detection is our most important tool. When found early, the 5-year survival rate is now 99 percent.

There is so much more that the greatest Nation in the world can and must do to get every American access to the care they need. This year, Jill and I reignited the Cancer Moonshot program that we first launched in 2016. We set a game-changing goal of cutting the overall cancer death rate by half in the next 25 years and brought leaders from 20-plus offices and agencies together to form a Cancer Cabinet to get it done. To accelerate research, my Administration also created ARPA–H, the Advanced Research Projects Agency for Health. Modeled on DARPA—the Pentagon agency that gave us the internet and GPS—ARPA–H will drive breakthroughs in preventing, detecting, and treating diseases like cancer. We are working to ensure that clinical trials recruit participants who reflect the full diversity of our Nation and find therapies that better preserve patients' quality of life. A cancer diagnosis is not only frightening but also a doorway into a confusing world of appointments, costs, and care. Patients and their families need information and support, which is why the First Lady has worked to highlight programs that put people at the center of their care.

At the same time, my Administration is working to boost access to life-saving screenings and treatments. That means safeguarding the Affordable Care Act, which requires insurers to cover mammograms and stops them from turning away survivors by listing cancer as a ''preexisting condition.'' It also means pushing to expand Medicaid so low-income Americans do not have to choose between paying the rent or paying for life-saving care. To that end, we made sure that the American Rescue Plan lowered health insurance costs for millions of families, and the Inflation Reduction Act will now lock in those lower premiums while also capping the amount

of money seniors pay for prescription drugs, including cancer drugs, at $2,000 a year.

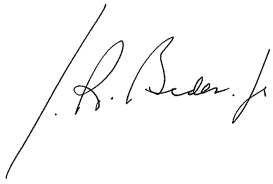
Finally, we are also joining with advocates to raise awareness about the life-saving importance of breast cancer screenings. Jill has dedicated herself to this work since 1993, when four of her friends were diagnosed with breast cancer in just 1 year. She later founded the Biden Breast Health Initiative, which educated high school girls in Delaware about breast health and encouraged them to spread the word to their own family members. As First Lady, she has traveled the country to encourage everyone to get the cancer screenings they need. Nearly 10 million life-saving screenings were missed during the pandemic. The First Lady and I call on all Americans to make sure they are caught up.

As so many families know too well, cancer can rip lives apart forever. Beating it is one of the biggest things we can do—as individuals and together as a Nation. This work transcends party and politics, and there is nothing we cannot do when we come together as Americans. For all those we have lost and for the ones we can save, let us rededicate ourselves this month to ending cancer and keep building this moonshot into a movement worthy of the precious lives at stake.

More information on breast cancer is available at cancer.gov/types/breast. Information specialists at the National Cancer Institute are also available to help answer cancer-related questions in English and Spanish at 1–800–422–6237. Additionally, the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program provides breast cancer screenings and diagnostic services to those with low incomes who are uninsured or otherwise qualify for the program. Americans can learn more about this program at cdc.gov/cancer/nbccedp/screenings.htm.

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 2022 as National Breast Cancer Awareness Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control breast cancer, and pay tribute to those who have lost their lives to this disease.

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



[FR Doc. 2022–21770
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10459 of September 30, 2022

National Clean Energy Action Month, 2022

By the President of the United States of America

A Proclamation

During National Clean Energy Action Month, we strive to turn the climate crisis into opportunity and recommit to moving America to a clean energy future. By leading the world in manufacturing and exporting clean energy technologies, creating good-paying union jobs, lowering costs for families, and addressing environmental injustice, the United States can meet one of the most consequential challenges of our time.

During my first year in office, my Administration set a groundbreaking goal: to cut our Nation's greenhouse gas emissions in half by 2030, reach 100 percent clean electricity by 2035, and achieve net-zero greenhouse gas emissions by 2050. We have made significant progress, creating the first-ever National Climate Task Force, reinstating and strengthening environmental protections, and inspiring record-breaking private sector commitments to transition to clean energy.

I have also signed key legislation to propel us toward these goals, including the historic Inflation Reduction Act, which is the largest investment to combat climate change in American history. This law will create a generation of good-paying jobs by expanding clean energy. It provides consumers with tax credits to buy electric cars or fuel cell vehicles, saving costs at the gas pump. It helps families keep cool in the summer and warm in the winter with rebates for efficient appliances and home weatherization. And it strengthens our energy security with incentives for clean energy production. In total, this law will save families hundreds of dollars per year in energy costs and reduce our Nation's greenhouse gas emissions by a billion metric tons in the year 2030 alone.

These actions build on my Administration's Bipartisan Infrastructure Law, an unprecedented investment to fortify our infrastructure against the climate crisis. Through this law, we are modernizing public transit with the latest clean energy technology, upgrading our power grid, and implementing a nationwide electric vehicle charging network. We are funding thousands of miles of new, resilient transmission lines to deliver clean energy to American homes and businesses. We are fortifying our grid to improve our energy security and independence. Most importantly, we are creating jobs across the country, putting plumbers, pipefitters, electrical workers, steel workers, and so many others to work on projects that support families and help tackle the climate crisis.

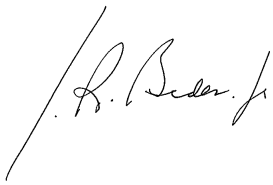
My Administration will prioritize ensuring that frontline and fence-line communities most impacted by climate change receive the benefits of the clean energy economy. That is why I made a commitment to deliver 40 percent of the benefits from Federal investments in climate and clean energy to disadvantaged communities and why I established a White House Environmental Justice Advisory Council in my first month in office. At the same time, we take seriously our responsibility to create new, good-paying jobs for the hardworking Americans in energy communities that have powered our economy for over a century and often suffer from legacy pollution caused by fossil fuels. To this end, we are helping these communities

access the resources they need to spur economic revitalization and clean up environmental pollution.

The climate crisis is here. Our Nation—and the world—sits at an inflection point. By investing in clean energy, modernizing our infrastructure, and ensuring that everyone benefits in the process, we can build a safer, healthier, and more energy-secure future.

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 2022 as National Clean Energy Action Month. I call upon the citizens of the United States to recognize this month by working together to mitigate climate change and achieve a healthier environment for all.

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



[FR Doc. 2022–21773
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10460 of September 30, 2022

National Disability Employment Awareness Month, 2022

By the President of the United States of America

A Proclamation

During National Disability Employment Awareness Month, we celebrate the essential contributions to our workplaces, economy, and Nation made by disabled Americans and recommit to promoting equal opportunity for all people.

For far too long in this country, employers could refuse to hire you if you were disabled. Stores could turn you away. If you used a wheelchair, there was no real way to take a bus or train to work or school. America simply was not built for all Americans. In 1945, President Truman established National Disability Employment Awareness Month and issued the first national call for disabled people to access all the opportunities and rewards of work. Forty-five years later, in 1990, the Congress came together to pass the Americans with Disabilities Act (ADA), which helps to ensure our workforce is more productive, prosperous, and inclusive by banning disability discrimination, including in the workplace. Courageous activists of all backgrounds had fought for decades to lay the groundwork and change public consciousness, and I was proud to cosponsor this groundbreaking civil rights law. Since then, the ADA has not only transformed lives, but it has also inspired over 180 other countries to pass similar laws and brought us closer to realizing the full promise of our Nation.

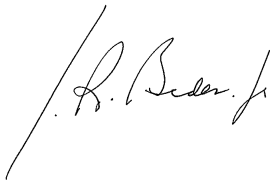
Still, we have a long way to go. Studies have found that Americans with disabilities are especially productive and motivated workers—but they still have a harder time getting jobs, promotions, and fair pay. They are three times less likely than others to be employed and often earn sub-minimum wages for their work. That is wrong. We have an obligation to change that, and as the Nation's largest employer, the Federal Government has a responsibility to set an example as a model workplace where everyone is valued and treated with respect. Last year, I issued an Executive Order putting diversity, equity, inclusion, and accessibility front and center across the entire Federal Government. To ensure our Federal workforce actually looks like America, the Executive Order directs agencies to find and remove barriers to hiring and promotion and to recruit more recent graduates with disabilities.

Meanwhile, my Administration's Labor Department is protecting the rights of workers with disabilities in the private sector, cracking down on employers who discriminate, and ending the unfair use of sub-minimum wages. The Departments of Education, Labor, Health and Human Services, and the Social Security Administration, are helping State and local governments, employers, and nonprofits that hire people with disabilities to access funding for competitive integrated employment opportunities. My Administration's Bipartisan Infrastructure Law is expanding access to transit, updating old train stations and airports so more people with disabilities can travel and work. We are working to ease the added threat the pandemic has posed to the disabled community and its support networks. Where long COVID has now risen to the level of a disability, we are helping people understand their rights and get the workplace accommodations they need.

This month, let us acknowledge workers with disabilities who make our communities, our economy, and our Nation stronger. Let us continue the legacy of generations of disability rights activists who have fought for equal employment opportunities, integrated workplaces, and equal pay for equal work. Let us deliver the promise of America to all Americans.

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 2022 as National Disability Employment Awareness Month. I urge all Americans to embrace the talents and skills that workers with disabilities bring and to promote the right to equal employment opportunity for all.

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



[FR Doc. 2022–21774
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10461 of September 30, 2022

National Domestic Violence Awareness and Prevention Month, 2022

By the President of the United States of America

A Proclamation

While our Nation has made significant progress in addressing domestic violence by responding to the stories and leadership of courageous survivors, as well as through advocacy and legislative action, domestic violence nonetheless remains all too common in America. During National Domestic Violence Awareness and Prevention Month, we continue to shine a light on the causes of this scourge, strengthen the ability of Federal, State, Tribal, territorial, and local officials to take action, and call on all communities to strengthen prevention efforts. My Administration is working to ensure that all survivors have access to justice and the support they need for their healing and well-being.

When I introduced the Violence Against Women Act (VAWA) in the Senate in 1990 with the support of many members of the Congress and community advocates, we began to bring these cases of abuse out of the shadows. For too long, few in this country were willing to call domestic violence a national epidemic. VAWA increased survivors' access to services and support, empowered Federal law enforcement to hold perpetrators accountable, and enhanced the enforcement of protection orders across State lines. In March of this year, I was proud to sign the VAWA Reauthorization Act of 2022 into law, which extends all current VAWA grant programs until 2027 and increases services and support for all survivors, including by strengthening access to services for survivors from underserved or marginalized communities. It also enhances evidence-based, trauma-informed trainings for law enforcement officers involved in assisting victims and investigating these crimes.

While we know that VAWA is making a significant difference, we also know that much work still remains. Millions of women and men are impacted by some form of intimate partner abuse each year. Domestic violence can cause injury, fear, post-traumatic stress disorder, housing insecurity, missed school or work, and other devastating consequences. Historically underserved populations, including LGBTQI+ survivors, persons with disabilities, immigrants, racial and ethnic minorities, and American Indians, Alaska Natives, and Native Hawaiians face some of the highest rates of domestic and sexual violence, along with additional barriers to safety and support. The effects of this epidemic stretch well beyond the home, impacting extended families, schools, and the workplace.

Over the past three decades, I have continued this commitment to preventing and addressing domestic violence and all forms of gender-based violence. To strengthen our support for victims during the pandemic, when we saw a rise in domestic violence as survivors experienced increased isolation, economic insecurity, and barriers to accessing help, my Administration increased funding for shelters and supportive service providers and offered targeted resources to culturally-specific, community-based organizations that address the needs of survivors in marginalized communities. In total, we have invested nearly $1 billion in supplemental funding from our American Rescue Plan to bolster these programs.

I also created the White House Gender Policy Council and called for the development of the first-ever Government-wide National Action Plan to End Gender-Based Violence, as well as updates to the 2016 United States Strategy to Prevent and Respond to Gender-Based Violence Globally. These strategies will provide a roadmap to guide my Administration's whole-of-government effort to end domestic violence, sexual assault, and other forms of gender-based violence.

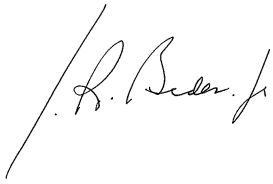
My efforts did not stop there. Last year, I signed the National Defense Authorization Act to fundamentally shift how the military investigates and prosecutes domestic violence, sexual assault, and related crimes. I also issued an Executive Order to implement important reforms to the military code. We owe it to those who bravely wear our Nation's uniform to improve support for survivors and expand prevention of all forms of gender-based violence.

In July, I signed the Safer Communities Act and provided significant resources for States to implement extreme risk protection order laws and also expanded measures to prevent abusers convicted of assaulting their current or former dating partners from buying or owning guns. Millions of women across America report being threatened with a gun by an intimate partner, and evidence suggests that when a gun is present, the risk of death from domestic violence is five times greater. Additionally, because cyberstalking, sextortion, and other forms of intimate partner violence involving technology are becoming increasingly common, we established a new White House Task Force to Address Online Harassment and Abuse and expanded efforts to prevent and address these harms.

As we continue the essential work of ending domestic violence, we can all help build a culture where abuse is not tolerated and where survivors are heard, supported, and protected. We can express our gratitude to the remarkable people and organizations that offer care and critical services to survivors of domestic violence, and we must remain committed to building a better world where all people can feel safe and respected and live free from abuse.

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 2022 as National Domestic Violence Awareness and Prevention Month. I call on all Americans to speak out against domestic violence and support efforts to educate all people about healthy relationships centered on respect; support victims and survivors in your own families and networks; and support the efforts of victim advocates, service providers, health care providers, and the legal system, as well as the leadership of survivors, in working to end domestic violence.

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



[FR Doc. 2022–21786
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10462 of September 30, 2022

National Youth Justice Action Month, 2022

By the President of the United States of America

A Proclamation

During National Youth Justice Action Month, we recommit to transforming our juvenile justice system, shifting its focus from punishment to support—from the past to the future. By investing more in all children's health and well-being, our youth can build a foundation for full lives and our whole country can benefit from their unlimited potential.

Every child in America deserves a fair shot through good schools, safe communities, and equal opportunities. But some 36,000 young Americans remain confined in juvenile residential facilities, too often stuck in unsafe environments, facing adult charges or severe sentences, and living with untreated trauma that keeps them from moving forward. Young people of color and young people with disabilities are disproportionately affected. We are not giving America's children the second chances they deserve. It is time to rethink our system in order to better reach the young people who need us most with guidance and support to keep them from coming in contact with the criminal justice system in the first place.

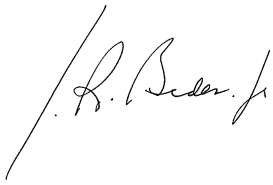
My Administration has invested historic amounts in improving our youth justice system, increasing funding for the Department of Justice's Juvenile Justice Programs, which had seen sharp cuts. We have also invested in schools, mentorship, and job training programs, providing more than $120 billion of American Rescue Plan funding to help schools safely reopen during the pandemic, to hire more teachers and counselors, to launch after-school and summer tutoring programs that help kids catch up, and to meet changing mental health needs. My Administration more than doubled funding for Full-Service Community Schools that support students and their families outside the classroom with important services like health care and career counseling. We have launched a national partnership to recruit 250,000 Americans to serve as tutors and mentors and called on the Congress to fund new programs that would turn juvenile detention facilities into job-training centers. Once young people come in contact with the justice system, we are working to make sure they are treated fairly—boosting access to lawyers who will fight for them and safely expanding alternatives to incarceration, including intensive job training and mentorship programs. Once they leave the system, we are helping youth to find housing, jobs, and other support. We are also urging States to expunge, seal, or vacate juvenile records where appropriate so more young Americans can move forward and build lives of dignity and opportunity.

This month, I stand with youth justice advocates in urging States and communities across the country to do more to help every child realize their full promise. I will never quit working to strengthen America's commitment to justice and building a system focused on redemption and rehabilitation, especially for our children.

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 2022 as National Youth Justice Action Month. I call upon all Americans to observe

this month by taking action to support our youth and by participating in appropriate ceremonies, activities, and programs in their communities.

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



[FR Doc. 2022–21787
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10463 of September 30, 2022

National Youth Substance Use Prevention Month, 2022

By the President of the United States of America

A Proclamation

During National Youth Substance Use Prevention Month, we rededicate ourselves to transforming the lives of America's youth through prevention. We commit to building and supporting communities where young Americans can live healthy and fulfilling lives, free from the dangers of substance use, laying the groundwork for strong future generations.

Our country has been battered by twin crises in recent years: an overdose epidemic and COVID–19. Last year, a record 107,000 Americans died of drug overdoses, ripping a hole in families across every community in the Nation. More than a thousand of those who died were teenagers—sons, daughters, sisters, brothers, and friends who still had their whole lives ahead of them. We cannot let that continue. My Administration is drawing on evidence-based strategies to prevent substance use and to intervene early so we can help keep America's young people healthy and safe. We are supporting programs that teach young people about the risks of drug and alcohol use—including the dangers of illicit fentanyl and counterfeit pills—and about the life-saving power of naloxone.

Preventing substance use during adolescence has been shown to significantly reduce the chance of developing a substance use disorder later in life. For every dollar we spend today on effective school-based prevention programs, we save $18 in the future by avoiding potential medical costs and boosting productivity on the job. Prevention programs also make young people less likely to one day have children who use substances, highlighting the far-reaching value these efforts have across generations.

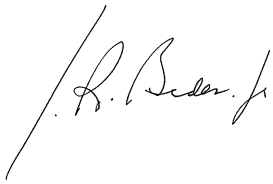
Americans can all agree that this work is critical—irrespective of their political party affiliation. That is why I made beating the opioid epidemic—our Nation's most deadly drug use crisis—a pillar of the bipartisan Unity Agenda that I unveiled in this year's State of the Union. I know that together, with resources and smart policy, we can overcome it. Last year, we invested nearly $4 billion in American Rescue Plan funds to expand mental health and substance use services and to help school districts increase the number of social workers on staff by as much as 54 percent. My Fiscal Year 2023 budget proposes $3.1 billion in National Drug Control funding for prevention, nearly $850 million more than last year. We have already provided more than $120 billion for quality tutoring, mental health, and afterschool programs. We are supporting Drug-Free Communities coalitions in all 50 States, giving local communities the tools and resources to address their own youth substance use issues in ways that are culturally appropriate. We are working to ensure that States leverage Medicaid funding to support schools providing mental health and substance use care to our youth. We are also working to ensure full parity between physical and mental health care so all Americans have access to quality, affordable care, including for substance use.

This month, I call on everyone—parents, siblings, friends, neighbors, teachers, community members, and more—to reach out to the young people in their lives to share information, promote healthy lifestyles, and help transform lives through evidence-based substance use prevention. We thank every

individual and every organization working on the front lines to prevent youth substance use. And we renew our commitment to building a healthier and more supportive Nation where all young people can reach their full potential and achieve their dreams. I will never quit fighting to get everyone the support and resources needed to beat this crisis. No one is ever alone.

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 2022 as National Youth Substance Use Prevention Month. Let us all take action to implement practice and evidence-based prevention strategies and improve the health of our Nation.

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



[FR Doc. 2022–21788
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10464 of September 30, 2022

National Community Policing Week, 2022

By the President of the United States of America

A Proclamation

Public trust is the foundation of public safety. Without trust in law enforcement, victims do not call for help, witnesses do not step forward, crimes go unsolved, and justice is not served. When police officers build trust with the public, they make our communities safer and our Nation more secure. This is the essence of community policing. This week, we reaffirm that safe, effective, and accountable community policing is the gold standard for law enforcement and recommit to supporting officers with the resources they need to do their jobs successfully and responsibly.

Police officers swear an oath to protect us from harm, uphold the rule of law, and serve their communities. While this job has always demanded excellence, working in law enforcement today is harder than it has ever been. Officers are expected to be everything all at once—from rescuing citizens from natural disasters, accidents, and crime to serving as counselors to people experiencing a mental health or substance use crisis. Law enforcement is noble and dangerous work that requires adequate resources and collaboration from community stakeholders.

That is why my Administration is helping officers tackle the complex challenges they face on the job each day while building public trust in the process. Through my Administration's American Rescue Plan, we secured historic funding to help States and cities hire officers for safe, accountable, and effective community policing, crime prevention, and intervention. We committed more Federal resources to support State and local law enforcement in 2021 than almost any other year on record. This year, through a bipartisan budget deal, we secured over $511 million for the Department of Justice's Community Oriented Policing Services Office. And my Administration has awarded Department of Justice (DOJ) grants to State, local, territorial, and Tribal law enforcement agencies to hire community policing professionals, to develop and test innovative policing strategies, and to provide training on collaborative policing approaches. I have also called for increased support for the DOJ's Project Safe Neighborhoods, which brings together law enforcement officials, prosecutors, community leaders, and other stakeholders to produce local solutions to violent crime.

Additionally, this year I was proud to sign an Executive Order to help build trust between law enforcement and communities across America and enhance public safety. It calls for a fresh approach to recruiting, training, retaining, and recognizing officers who embody and exemplify the highest standards of the profession. The Executive Order mandates that all Federal agents wear and activate body cameras while on patrol, directs agencies to promote officer wellness, and creates a new national law enforcement accountability database in which all Federal law enforcement agencies must participate. This database will include records of officer misconduct as well as commendations and awards.

There is still much more we can do. This summer, I outlined my Administration's Safer America Plan—an investment in police who walk the beat, know the neighborhood, and are accountable to those they are sworn to serve and protect. This plan would help State and local police departments

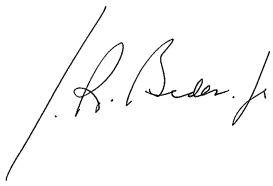
recruit, hire, and train 100,000 additional officers for safe, effective, and accountable community policing consistent with the standards in the Executive Order I signed. It would also help States, cities, Tribes, and territories increase mental health and substance use disorder services and crisis responders for non-violent situations to reduce the burden on police officers. This action builds on my Administration's work to help States establish ''Mobile Crisis Intervention Teams'' that provide individuals experiencing a mental health or substance use crisis with rapid access to mental health professionals. My Safer America Plan will also address the root causes of crime and the burden on officers so they can focus on policing by investing $20 billion in housing, job training, reentry, youth enrichment, and other stabilizing social services.

I believe the vast majority of Americans want the same things from law enforcement: trust, safety, and accountability. Effective community policing can lower incidents of violent crime, decrease the occurrences of unjustified uses of force, build trust and community, and help address the long-standing inequities in our criminal justice system, which disproportionately affect people of color and people with disabilities.

During National Community Policing Week, I call on communities across our Nation to invest in strengthening relationships between officers and the individuals they serve and protect. I also encourage local residents, business owners, and other community stakeholders to collaborate with law enforcement, identify initiatives that will help build mutual trust, and help prevent crime. When Americans work together with common purpose and with mutual trust and respect, we can make this Nation stronger and keep our people safer.

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 2 through October 8, 2022, as National Community Policing Week. I call upon law enforcement agencies, elected officials, and all Americans to observe this week by recognizing ways to improve public safety, build trust, and strengthen community relationships.

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



[FR Doc. 2022–21789

Filed 10–4–22; 8:45 am]

Billing code 3395–F3–P

Presidential Documents

Proclamation 10465 of September 30, 2022

Child Health Day, 2022

By the President of the United States of America

A Proclamation

Across America, parents are united by a common dream that their children's lives will be healthier, happier, and more promising than their own. On Child Health Day, we rededicate ourselves to making that dream a reality and recommit to providing every child with the quality health care, child care, and education they need to thrive.

Supporting our children means—first and foremost—keeping them safe. The devastating truth is that guns are currently the number one cause of death for children in the United States. That is not acceptable, and it is why I signed the first major bipartisan law in nearly 30 years to keep firearms out of the hands of people who are a danger to themselves and to others, protecting innocent children from rampant gun violence—especially in schools. This is just the beginning; I will continue to push for an assault weapon ban that will limit access to these dangerous weapons on American streets and in our communities. No child should have to live in fear.

At the same time, no parent should have to lie awake at night wondering how they will pay for the treatment or hospital care their child needs. Thanks to the American Rescue Plan and other key initiatives of my Administration, one million children have gained health coverage since I came into office. My Inflation Reduction Act will also lower health insurance premiums for 13 million Americans. To give hardworking parents more breathing room during the pandemic, I expanded the child tax credit—a measure estimated to have helped cut child poverty by over 40 percent last year. This money was a life-changer for families who too often must choose between a paycheck and taking care of themselves and their loved ones. Additionally, in September, I convened the first White House Conference on Hunger, Nutrition, and Health in over 50 years, at which we released a national strategy to create a pathway to free, healthy school meals for all children—beginning by expanding free school meals to 9 million more kids by 2032.

My Administration's efforts to tackle the national mental health crisis, especially among our Nation's youth, build on these important measures. Today, suicide is the second leading cause of death among young people between the ages of 10 and 24, and over the past several years, mental health emergencies have increased among youth of all ages. In response, my Administration is making it easier for children across America to access mental health specialists through their pediatricians' offices. We are helping to address the harms of social media use on youth mental health and investing billions of dollars to expand access to mental health services and professionals in schools. We are also educating States on ways to leverage all Federal resources, including Medicaid, to improve the delivery of health care in schools. Already, we are making progress. As of July, the number of school social workers has risen 54 percent relative to the years before the pandemic. In the same period, the number of counselors is up 22 percent, and the number of school nurses has also increased by 22 percent.

To protect our children from the COVID–19 pandemic, my Administration rolled out vaccines for children 6 months and older, helping to ensure

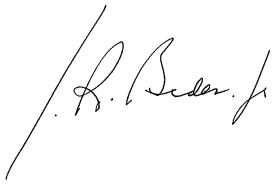
that kids and infants can be safer in all public spaces, including classrooms and daycares. We are delivering affordable high-speed internet to every American so students no longer have to sit in fast food parking lots just to use the Wi-Fi to do their homework. I secured funding to help replace every single lead pipe in the Nation so no one has to second-guess the quality of the water their child is drinking. The Inflation Reduction Act will also replace thousands of diesel school buses with electric buses, saving our kids from inhaling dangerous fumes.

I know there is so much more work to do to build a future worthy of the hopes and dreams of our children. We must secure free, high-quality preschool for every American child and lower health care costs even more for American families. I continue calling for tax breaks for middle-class parents and for new laws that keep our children safe from violence at school and at home. I will do everything in my power to tackle the climate crisis and pass down a healthier planet to future generations. To win the competition for the future, we must continue building a healthier and safer Nation for our children. Our families and our country depend on it.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as Child Health Day and has requested that the President issue a proclamation in observance of this day.

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 Monday, October 3, 2022, as Child Health Day. I call upon families, child health professionals, faith-based and community organizations, and governments to help ensure that America's children stay safe and healthy.

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



[FR Doc. 2022–21790
Filed 10–4–22; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register

Vol. 87, No. 192

Wednesday, October 5, 2022

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

[Docket No. CFPB–2022–0023]

RIN 3170–AB12

Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; correction.

SUMMARY: On June 24, 2022, the Consumer Financial Protection Bureau (Bureau or CFPB) published the ''Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)'' final rule (Human Trafficking Final Rule) in the **Federal Register**. The **SUPPLEMENTARY INFORMATION** in the Human Trafficking Final Rule contained a formatting error in footnote 51. This document corrects this error.

DATES: This correction is effective on October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Tingley, Counsel; Lanique Eubanks or Brandy Hood, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: On June 24, 2022, the Bureau published in the **Federal Register** the Human Trafficking Final Rule to address recent legislation that assists consumers who are victims of trafficking by amending Regulation V, which implements the Fair Credit Reporting Act (FCRA).[1] The **SUPPLEMENTARY INFORMATION** contained a formatting error in footnote 51 in the third column of page 37712 of volume 87 of the **Federal Register**. The phrase ''*See* note Error! Bookmark not defined. *supra*;'' should read ''*See* note 11, *supra,*''. This change references a prior footnote in the Human Trafficking Final Rule.

[1] 87 FR 37700 (June 24, 2022).

Correction

Accordingly, the Bureau makes the following correction to FR Doc. 2022–13671 published on June 24, 2022 (87 FR 37700):

1. Revise footnote 51 on page 37712 to read ''*See* note 11, *supra,* Training & Tech. Assistance Ctr., Off. for Victims of Crime, U.S. Dep't of Just., *Human Trafficking Task Force e-Guide, https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach* (last visited June 20, 2022).''

Dani Zylberberg,

Counsel and Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022–21535 Filed 10–4–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0937; Airspace Docket No. 20–AEA–11]

RIN 2120–AA66

Amendment of the Class D and Class E Airspace and Establishment of Class E Airspace; Niagara Falls and Buffalo, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace and Class E airspace at Niagara Falls International Airport, Niagara Falls, NY, and amends and establishes Class E airspace extending upward from 700 feet above the surface at Buffalo, NY. This action is the result of airspace reviews conducted to support new instrument procedures being implemented at Buffalo-Lancaster Regional Airport, Lancaster, NY. The names and geographic coordinates of airports and navigational aids are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E surface area, and the Class E airspace extending upward from 700 feet above the surface at Niagara Falls International Airport, Niagara Falls, NY; amends the Class E airspace extending upward from 700 feet above the surface at Buffalo Niagara International Airport, Buffalo, NY, and Akron Airport/Jesson Field, Akron, NY, contained within the Buffalo, NY, airspace legal description; and establishes Class E airspace extending upward from 700 feet above the surface at Buffalo-Lancaster Regional Airport, Lancaster, NY, which is contained within the Buffalo, NY, airspace legal description, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (85 FR 70089; November 4, 2020) for Docket No. FAA–2020–0937 to amend the Class D airspace and Class E airspace at Niagara Falls International Airport, Niagara Falls, NY, and amend and establish Class E airspace extending upward from 700 feet above the surface at Buffalo, NY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

Subsequent to publication, the FAA discovered a typographic error in the geographic coordinates for the Niagara Falls Intl: RWY 28R–LOC contained in the Niagara Falls, NY, Class D airspace and Class E surface area airspace legal descriptions. These geographic coordinates have been corrected in this action.

The term ''Notice to Airmen'' has been updated to ''Notice to Air Missions'' since the NPRM was published. As this is an administrative amendment and does not affect the airspace as proposed in the NPRM, this update has been incorporated into this action.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class D airspace to within a 4.6-mile (increased from a 4.5-mile) radius of Niagara Falls International Airport, Niagara Falls, NY; amends the extension to 1 mile (decreased from 1.8 miles) each side of the 090° bearing from the Niagara Falls Intl: RWY 28R–LOC (previously KATHI LOM) extending from the 4.6-mile radius of the airport to 4.8 miles east of the airport; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E surface area airspace to within a 4.6-mile (increased from a 4.5-mile) radius of Niagara Falls International Airport, Niagara Falls, NY; amends the extension to 1 mile (decreased from 1.8 miles) each side of the 090° bearing from the Niagara Falls Intl: RWY 28R–LOC (previously KATHI LOM) extending from the 4.6-mile radius of the airport to 4.8 miles east of the airport; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile (increased from a 6.7-mile) radius of Buffalo Niagara International Airport, Buffalo, NY; removes the extensions associated with Buffalo Niagara International Airport as they are no longer needed; updates the name and geographic coordinates of Buffalo Niagara International Airport (previously Greater Buffalo International Airport) to coincide with the FAA's aeronautical database; removes the Buffalo VORTAC from the airspace legal description as it is no longer needed; removes ''and within the arc of a 10.5-mile radius circle from 052° to 112° clockwise, centered on a point, lat. 42°56′26″ N, long. 78°44′10″ W'' as it is no longer needed; amends the Class E airspace extending upward from 700 feet above the surface to within a 7.1-mile (increased from a 7-mile) radius of Niagara Falls International Airport, contained within the Buffalo, NY, airspace legal description; amends the extension from Niagara Falls International Airport to within 8.2 miles north (increased from 7 miles) and 7 miles (increased from 5.2 miles) south of the 090° bearing from the KATHI NDB (previously Niagara Falls International Airport east localizer course) extending from the KATHI NDB (previously OM) to 16.8 miles (increased from 10.5 miles) east of the KATHI NDB (previously OM); removes the Niagara Falls International Airport East Localizer Course OM as it is no longer needed; updates the geographic coordinates of Niagara Falls International Airport to coincide with the FAA's aeronautical database; amends the Class E airspace extending upward from 700 feet above the surface to within a 6.3-mile (decreased from a 6.4-mile) radius of Akron Airport/Jesson Field, Akron, NY, contained within the Buffalo, NY, airspace legal description; removes the extension associated with Akron Airport/Jesson Field as it is no longer needed; updates the name and geographic coordinates of Akron Airport/Jesson Field (previously Akron Airport) to coincide with the FAA's aeronautical database; and establishes Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Buffalo-Lancaster Regional Airport, Lancaster, NY, which is contained within the Buffalo, NY, airspace legal description.

This action is the result of airspace reviews conducted to support the establishment of new instrument procedures at Buffalo-Lancaster Regional Airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Niagara Falls, NY [Amended]

Niagara Falls International Airport, NY
(Lat. 43°06′27″ N, long. 78°56′45″ W)
Niagara Falls Intl: RWY 28R–LOC
(Lat. 43°06′34″ N, long. 78°58′19″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.6-mile radius of Niagara Falls International Airport, and within 1 mile each side of the 090° bearing from the Niagara Falls Intl: RWY 28R–LOC extending from the 4.6-mile radius to 4.8 miles east of the airport, excluding the portion outside the United States and that airspace which coincides with the Buffalo, NY, Class C airspace. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AEA NY E2 Niagara Falls, NY [Amended]

Niagara Falls International Airport, NY
(Lat. 43°06′27″ N, long. 78°56′45″ W)
Niagara Falls Intl: RWY 28R–LOC
(Lat. 43°06′34″ N, long. 78°58′19″ W)

That airspace extending upward from the surface within a 4.6-mile radius of Niagara Falls International Airport, and within 1 mile each side of the 090° bearing from the Niagara Falls Intl: RWY 28R–LOC extending from the 4.6-mile radius to 4.8 miles east of the airport, excluding the portion outside the United States and that airspace which coincides with the Buffalo, NY, Class C airspace. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

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

* * * * *

AEA NY E5 Buffalo, NY [Amended]

Buffalo Niagara International Airport, NY
(Lat. 42°56′26″ N, long. 78°43′50″ W)
Niagara Falls International Airport, NY
(Lat. 43°06′27″ N, long. 78°56′45″ W)
KATHI NDB
(Lat. 43°06′33″ N, long. 78°50′18″ W)
Akron Airport/Jesson Field, NY
(Lat. 43°01′16″ N, long. 78°28′57″ W)
Buffalo-Lancaster Regional Airport, NY
(Lat. 42°55′19″ N, long. 78°36′43″ W)
Buffalo Airfield, NY
(Lat. 42°51′43″ N, long. 78°43′00″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Buffalo Niagara International Airport, and within a 7.1-mile radius of Niagara Falls International Airport, and within 8.2 miles north and 7 miles south of the 090° bearing from the KATHI NDB extending from the KATHI NDB to 16.8 miles east of the KATHI NDB, and within a 6.3-mile radius of Akron Airport/Jesson Field, and within a 6.3-mile radius of Buffalo-Lancaster Regional Airport, and within a 6.3-mile radius of Buffalo Airfield.

Issued in Fort Worth, Texas, on September 28, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–21433 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2022–0796]

RIN 1625–AA00

Safety Zone; Green River, Henderson, KY

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters from Mile Marker 7.0 to 9.0 on the Green River, outside of Henderson, KY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the bridge demolition. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley.

DATES: This rule is effective without actual notice from October 5, 2022, through 6 p.m. October 31, 2022. For the purposes of enforcement, actual notice will be used from 6 a.m. October 3, 2022, through October 5, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0796 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer William Miller, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *William.R.Miller@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because demolition is planned for the US 60 East bridge across Green River, and a date was not decided until recently. It is impracticable to publish an NPRM because we must establish this safety zone by October 3, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is impracticable because immediate action is needed to protect personnel and vessels from potential safety hazards associated with the demolition of the US 60 East Green River Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The

Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the bridge demolition starting October 3, 2022, will be a safety concern for anyone within Mile Marker (MM) 7.0 to MM 9.0 of the Green River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. on October 3rd, 2022, through 6 p.m. on October 31st, 2022. The safety zone will cover all navigable waters within MM 7.0 to MM 9.0 of the Green River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. Vessel traffic will be allowed to transit safely when the closure is not in effect, and will only be stopped for short periods while bridge demolition is underway, as well as during cleanup of any debris fallout that may cause a hazard to navigation. Specific dates of closure will be listed in the Broadcast Notice to Mariners closer to the date of the demolition.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 28 days that will prohibit entry within MM 7.0 to MM 9.0 on the Green River, while operations involving demolition and cleanup are underway. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination will be produced in the docket the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0796 to read as follows:

§ 165.T08–0796 Safety Zone; Green River, Henderson, KY.

(a) *Location.* The following area is a safety zone: All waters of the Green River, from surface to bottom, from Mile Marker 7.0 to Mile Marker 9.0.

(b) *Regulations.* (1) Under the general safety zone regulations in § 165.23, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Ohio River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Ohio Valley.

(2) To seek permission to enter, contact the COTP or the COTP's representative via Channel 16 on VHF radio. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 6 a.m. October 3, 2022, to 6 p.m. October 31, 2022.

Dated: September 28, 2022.

Heather R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2022–21626 Filed 10–4–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0199]

RIN 1625–AA11

Regulated Navigation Area; Environmental Protection Agency Superfund Site, Point Ruston, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This RNA is necessary to preserve the integrity of protective sediment caps placed in multiple areas within this waterway as part of the remediation process at the Commencement Bay, Nearshore/Tideflats Environmental Protection Agency (EPA) Superfund Cleanup Site. This RNA prohibits activities which would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment cap, unless authorized by the Captain of the Port (COTP) Puget Sound or their Designated Representative. The RNA will not affect vessels transiting or navigating within this waterway.

DATES: This rule is effective November 4, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0199 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6089, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
EPA Environmental Protection Agency
FR Federal Register
NPRM Notice of proposed rulemaking
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On December 6, 2021, the United States EPA Region 10 notified the Coast Guard that it requests the establishment of an RNA or ''No Anchor Zone'' for commercial vehicles within the Operable Unit 6 (OU6) Asarco sediment cap in the Commencement Bay Nearshore/Tideflat (CB–NT) Superfund Site. This RNA will prohibit activities that could disrupt the integrity of the engineered sediment caps that have been placed within the OU6 Asarco sediment cap. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the integrity of the sediment caps.

In response, on June 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Regulated Navigation Area; Environmental Protection Agency Superfund Site, Point Ruston, Commencement Bay, Tacoma, WA'' (87 FR 34834). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this RNA. During the comment period that ended August 8, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Puget Sound (COTP) has determined that establishing a permanent regulation restricting activities such as anchoring, dragging, trawling, or other activities will prevent disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published June 8, 2022. The comment was in support of the proposed rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a RNA to prohibit certain activities including anchoring, dragging, trawling, and other activities that involve disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA. No vessel or person would be permitted to perform the aforementioned activities without obtaining permission from the Captain of the Port, Puget Sound (COTP) or a designated representative.

The RNA would include all waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18′12.0″ N, 122°30′26.0″ W onshore, thence 240 feet to position 47°18′13.0″ N 122°30′22.0″ W offshore, thence 2,900 feet to position 47°17′52.0″ N, 122°29′53.0″ W offshore, thence 500 feet to position 47°17′49.0″ N 122°29′59.0″ W onshore. These coordinates are based on World Geodetic System (WGS 84).

The prohibition for anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps would not apply to vessels or persons engaged in activities associated with remediation efforts in the Commencement Bay Nearshore/Tideflat (CB–NT) Superfund Sites, provided that the COTP is given advance notice of those activities by the EPA. Vessels may otherwise transit or navigate within this area without reservation.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment caps.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a permanent regulated navigation area for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This rule prohibits activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA Superfund Cleanup Site. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER**

INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.1344 to read as follows:

§ 165.1344 Regulated Navigation Area; Commencement Bay Nearshore/Tideflat Superfund Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following area is a regulated navigation area (RNA): All waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18′12.0″ N, 122°30′26.0″ W onshore, thence 240 feet to position 47°18′13.0″ N 122°30′22.0″ W offshore, thence 2,900 feet to position 47°17′52.0″ N, 122°29′53.0″ W offshore, thence 500 feet to position 47°17′49.0″ N 122°29′59.0″ W onshore. These coordinates are based on World Geodetic System (WGS 84).

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Prohibited activities include those that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA Superfund Cleanup Site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Middle Waterway Superfund Sites, provided that the Captain of the Port (COTP) Puget Sound is given advance notice of those activities by the EPA.

Dated: September 28, 2022.

M.W. Bouboulis,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2022–21577 Filed 10–4–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0652]

RIN 1625–AA00

Safety Zone; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 602.5 to MM 603.5 from 7 p.m. on October 24 through 1 a.m. on October 25, 2022. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY during a planned film stunt on October 24 and 25, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 7 p.m. on October 24 through 1 a.m. on October 25, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0652 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST2 Christopher Roble, U.S. Coast Guard; telephone 502–779–5336, email *Christopher.J.Roble@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On July 22, 2022, Messiah's Star LLC notified the Coast Guard that it will be conducting a film stunt from 7 p.m. on October 24, 2022 to 1 a.m. on October 25, 2022, as part of filming for a film titled ''Just One Life.'' The stunt is a controlled fall and is to take place from the Big Four Pedestrian Bridge to the Ohio River below at MM 603.

The event will include 3 swimmers, a deck boat, and a houseboat.

In response, on August 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Ohio River, Louisville, KY (87 FR 48125). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the film stunt. During the comment period that ended September 7, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to protect persons and vessels from the safety hazards associated with the planned film stunt event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the film stunt on October 24 and 25, 2022, will be a safety concern for anyone on the navigable waters of the Ohio River between MM 602.5 and MM 603.5. The purpose of this rule is to ensure the safety of vessels and these navigable waters during the scheduled 7 p.m. through 1 a.m. film stunt.

IV. Discussion of the Rule

As noted above, we received no comments on the NPRM published on August 8, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022. The safety zone covers all navigable waters of the Ohio River between MM 602.5 and MM 603.5. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the scheduled 7 p.m. through 1 a.m. film stunt. No vessel or person will be permitted to enter the safety zone

without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will restrict transit on a one-mile stretch of the Ohio River for 6 hours on one night. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be in place from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022 on the Ohio River between MM 602.5 to MM 603.5.

It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0652 to read as follows:

§ 165.T08–0652 Safety Zone; Ohio River, Miles 602.5–603.5, Louisville, KY

(a) *Location.* The following area is a temporary safety zone: All navigable

waters of the Ohio River between MM 602.5 and 603.5.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 502–779–5424.

(d) *Enforcement period.* This section is effective from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022.

Dated: September 22, 2022.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2022–21542 Filed 10–4–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0558; FRL–9308–02–R6]

Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard for the St. Bernard Parish, Louisiana Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the St. Bernard Parish sulfur dioxide (SO_2) nonattainment area (''St. Bernard area'' or ''area'') failed to attain the primary 2010 one-hour SO_2 national ambient air quality standard (NAAQS) under the Clean Air Act (CAA or the Act) by the applicable attainment date of October 4, 2018. This determination is based upon consideration of and review of all relevant and available information for the St. Bernard area leading up to the area's attainment date of October 4, 2018, including emissions and monitoring data, compliance records for the area's primary SO_2 source, the Rain CII Carbon, LLC (Rain) facility, and air quality dispersion modeling based on the allowable limits.

DATES: This rule is effective on November 4, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0558. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, SO_2 and Regional Haze Section (R6–ARSH), 214–665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed here if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our December 7, 2021 proposal (86 FR 69210). In that document, we proposed to determine that the St. Bernard Parish SO_2 nonattainment area failed to attain the primary 2010 one-hour SO_2 NAAQS under the CAA by the applicable attainment date of October 4, 2018. This proposed determination was based upon consideration of and review of all relevant and available information for the St. Bernard area leading up to the area's attainment date of October 4, 2018, including (1) emissions and monitoring data, (2) the state's air quality modeling demonstration, which showed the emission limits and stack parameters required at Rain, the primary source of SO_2 emission in the area, that were necessary to provide for the area's attainment, and (3) Rain's available compliance records between the period when the Agreed Order on Consent (AOC) limits became effective (August 2, 2018) and the area's attainment date. The state's dispersion modeling is based on the allowable limits in the August 2, 2018 AOC between Rain and the Louisiana Department of Environmental Quality (LDEQ). Compliance with those limits showed modeled design values in attainment of the SO_2 NAAQS, but close to the level of the NAAQS (*i.e.,* with little margin of safety). Rain, however, has demonstrated a pattern of difficulty meeting these federally enforceable applicable SO_2 emission limits and stack parameters (memorialized in its Title V permit and the AOC). Review of Rain's compliance record provides evidence that emissions have exceeded those prescribed limits, and that stack temperatures and flowrates have not met the parameters present in the modeling, such as (1) reported deviations during the period between the effective date of the limits and the attainment date and (2) reported underestimation of emissions from the hot stack. As a result of these difficulties in meeting the limits in the AOC, we cannot determine that the area attained the standard by the attainment date. EPA's final determination, described further in this action and explained in our response to comments, relies on the same basis and rationale that was used in our proposed determination.

We received comments on the December 7, 2021 proposal from several commenters including the state, community members and community groups, and industry groups. In the following section, we are providing a summary of responses to certain significant comments received on the proposal. In subsections II.B through II.E of this action, we provide a response to several community comments that while not germane to our final decision here, serve to better aid and inform the public of matters raised by such commenters. The response to comments (RTC) document accompanying this action and found in the public docket for this rulemaking contains these summaries and the full text of all of the comments that the EPA received during the public comment period from December 7, 2021, to January 13, 2022, our full responses to all comments, and additional details on our responses that are not found in this notice. After careful consideration of the public comments, EPA is finalizing the December 7, 2021, proposed finding that the St. Bernard Parish SO_2 nonattainment area has failed to attain the 2010 one-hour SO_2 NAAQS by the applicable attainment date of October 4, 2018.

II. Response to Comments

A. Comments Opposed to EPA's Proposed Determination That the St. Bernard Area Failed To Attain the SO_2 NAAQS

Several commenters opposed EPA's proposed determination that the St. Bernard area failed to attain the one-hour SO_2 NAAQS by the applicable attainment date. These commenters, including LDEQ and Rain CII Carbon (Rain), asserted that EPA should not determine the area failed to attain but should instead find that St. Bernard Parish is in attainment with the 1-hour SO_2 NAAQS. These commenters identified several categories of factors that they claim support finding that the area did attain by the October 2018 attainment date. These factors include: (1) the large reductions in emissions at Rain and nearby sources, (2) the two monitors in the area have monitoring levels below the NAAQS level, (3) the AERMOD modeling included in the State Implementation Plan (SIP) demonstration was conservative and demonstrated attainment, and (4) the facility has achieved a high level of compliance with the limits in the attainment demonstration SIP.

In the following parts of this subsection II.A, EPA summarizes each of these factors as a separate group of comments and provides a response, and then EPA summarizes and provides a response to the commenters' general assessment that the combination of these factors supports their claim that the area attained the 2010 SO_2 NAAQS.

1. Emissions Reductions at Rain and Other Sources

Comment: The commenters state that EPA's proposed rule fails to consider the major improvements to air quality in St. Bernard Parish that have occurred since 2013, which include (1) permitted and actual emissions reductions from the Rain facility and (2) emissions reductions from other SO_2 sources (*e.g.,* industrial, mobile, and non-road) in and around St. Bernard Parish. For other SO_2 industrial sources, commenters specify that both Chalmette Refining LLC (Chalmette Refining) and Valero Refining Meraux, LLC (Valero Refining) had consent decrees with both EPA and LDEQ in 2006 and 2011, respectively, that have resulted in reducing actual SO_2 emissions from these two facilities by over 90% in the last decade. Commenters also assert that EPA has promulgated regulations to control fuel and engine standards to reduce SO_2 emissions from on-road and non-road engines for the last 15 years which caused mobile source SO_2 emissions to decrease significantly in the last decade. Commenters pointed to LDEQ's November 9, 2017 proposed SIP as evidence that mobile and nonpoint source emissions accounted for hundreds of tons of SO_2 emissions in 2011 and have significantly decreased from that level in the last decade. Additionally, the commenters state that the downward SO_2 emission trends show significant SO_2 emissions reductions that have been sustained. As an example of this downward SO_2 emission trend, the commenters state that a petroleum refinery (Phillips 66) in a nearby parish with past SO_2 emissions averaging 400 tons per year (tpy) of SO_2 in the past five years recently announced that it will permanently shut down, which will provide additional air quality improvements to the St. Bernard area. The commenters argue that EPA should consider the downward SO_2 emissions trends and the significant reductions of actual SO_2 emissions at these sources in and around St. Bernard Parish as evidence that St. Bernard area has attained the SO_2 NAAQS, and that EPA failed to discuss these reductions in any meaningful way in a weight-of-evidence approach.

Response: EPA disagrees with the commenter's assertion that it failed to consider permitted, actual, and consent decree-based emissions reductions. EPA recognizes that significant reductions in SO_2 emissions have occurred and that these reductions have improved air quality. EPA, however, must consider all available information in determining whether sufficient emission reductions occurred to provide for attainment by the applicable attainment date of October 4, 2018. In this case, and as detailed more in this section, Rain had difficulty complying with its enforceable emissions limits and stack parameters for certain operating scenarios. The modeled attainment demonstration must be based on short term emissions limits or potential to emit and compliance with these limits is necessary to ensure attainment of the standard throughout the area.

EPA considered all the available information during our review of whether the St. Bernard area attained or failed to attain the SO_2 NAAQS by the attainment date, including information on emissions reductions from SO_2 sources in the area. In this instance, the consent decrees and the LDEQ's attainment demonstration modeling relied upon federally enforceable reductions in short-term allowable emission rates. EPA acknowledges that there have been large reductions in actual SO_2 emissions from the Rain facility and the two refineries in St. Bernard Parish. We note that Chalmette Refinery and Valero Refinery both had previously entered into consent decrees with the LDEQ and EPA that implemented new SO_2 emissions limits, including reduction of the facilities' allowable emission rates or Potential to Emit (PTE). As explained in more detail in the TSDs that accompany EPA's separate, prior approval of the attainment demonstration SIP for St. Bernard,[1] EPA and LDEQ worked together to identify the current emission limits that reflect the reductions in short-term PTE/allowable emission rates for these two refineries (Chalmette Refinery and Valero Refinery) which LDEQ relied upon in its attainment demonstration modeling.[2]

As discussed in more detail in response to a comment concerning the modeling in the attainment demonstration (subsection II.A.3 of this notice), EPA's 40 CFR part 51 Appendix W, Guideline on Air Quality Models, requires the use of short-term PTE/allowable emissions when modeling the major sources in the nonattainment area. Since the 1-hour SO_2 NAAQS is an hourly standard that is based on the three-year average of the 99th percentile of the annual distribution of daily maximum one-hour average concentrations, the potential exists to violate the standard with relatively few modeled or monitored exceedances. For this reason, EPA's guidance is to model the short-term PTE/allowable limits for sources such as Rain, Chalmette Refinery and Valero Refinery. LDEQ included revised short-term PTE/allowable limits at Rain, Chalmette Refinery and Valero Refinery in its modeling for the attainment demonstration. These revised limits properly account for the allowable emission reductions by using the enforceable short-term PTE/allowable emission rates based on the latest permit and consent decree data in 2018 when the modeling was conducted.

The commenters did not identify any additional significant changes in enforceable short-term emission rates for the Rain, Chalmette, and Valero facilities that were required in 2018 that should have been included in the 2018 modeling. EPA acknowledges that there have been actual and allowable emission reductions in the last decade and since 2016 and that the area's air quality has improved. However, these reductions in allowable emissions for all

[1] In a May 29, 2019 final action, EPA approved the nonattainment area SIP for the St. Bernard area, which also included the area's attainment demonstration (84 FR 24712).

[2] EPA's Attainment Demonstration Supplemental TSD pages 14–18.

three facilities were factored into the attainment demonstration modeling. Specifically, the modeling incorporated the most recent permit limits that existed in 2018 and included reductions that had already occurred from consent decrees for Chalmette and Valero refineries. These reductions at the refineries were already in the modeling that was used to analyze potential changes to Rain's February 2018 AOC and identify the new short-term emission limits and stack parameters for Rain with which compliance was necessary to bring the area into modeled attainment. Therefore, the final modeling scenarios included the reductions necessary at Rain, including the emission limits and stack parameter limits for Rain's 11 operational scenarios. These emission limits and stack parameters were included in the August 2, 2018 AOC between LDEQ and Rain. LDEQ's attainment demonstration modeling and SIP relied on these emissions limits as necessary for the area to attain the NAAQS. EPA's finding of failure to attain is based on all of the evidence before it, notably that the Rain facility has been unable to comply with those AOC limits that were necessary to demonstrate attainment of the NAAQS.

EPA disagrees with the commenters' claim that EPA failed to consider downward annual emissions trends and that these annual reductions are evidence that the area has attained the NAAQS. Reductions in longer term actual annual emissions are helpful, but changes in short-term PTE/allowable emission limits and short-term actual emissions are what is important for demonstrating and reaching attainment of the 1-hour SO_2 NAAQS. As explained earlier, the reductions in allowable short-term emissions for all three facilities were factored into the attainment demonstration modeling. These short-term emission limits have the most influence on the 1-hour SO_2 NAAQS, as this standard is set to protect against acute short-term exposure of SO_2; this is the reason EPA's modeling guidance [3] specifies the use of short-term PTE/allowable SO_2 emission limits in determining maximum modeled design values. We also note that any emission reductions that may have occurred after the October 4, 2018 attainment date cannot be used to support a determination of whether or not the area attained by October 4, 2018.

Commenter mentioned that EPA had not directly factored in further reductions from federal measures for mobile and non-road emission sources as part of EPA's determination. First, EPA would like to clarify that the commenter misconstrued the potential degree of mobile (on-road and non-road) emission reductions. The commenter asserted that mobile and nonpoint source emissions accounted for hundreds of tons of SO_2 emissions in 2011 (specifically, nonpoint emissions of 702.22 tpy as provided in LDEQ's November 9, 2017 SIP); while this is correct, EPA notes that mobile (on-road and non-road) emissions are only a small portion of the emissions accounted for in nonpoint source emissions as part of the National Emission Inventory (NEI), and the nonpoint category includes other emission sources that did not have reductions due to the federal measures cited by the commenter. EPA notes that in that same SIP, the non-road and on-road SO_2 emissions for the 2011 NEI emissions for St. Bernard Parish were only 1.31 and 2.35 tpy, respectively. Therefore, any reductions to these relatively small emissions from mobile sources due to federal rules would have a minimal impact on the overall inventory.

Second, mobile source emissions are not explicitly modeled but are included as part of the background concentration which is then added to the modeled concentrations to result in modeled design values. The background concentration added to the modeling is already low [4] and represents the impacts of all emission sources not explicitly modeled, including some mobile source emissions, and these mobile source emissions are only a small fraction of the SO_2 sources that make up the total background concentration added to the modeled values. Therefore, any reductions of mobile source emissions due to federal measures from 2012–2014 up until the attainment date in 2018 that were represented in the background concentration would be expected to only potentially result in a very small change in the background concentration and would not be expected to significantly change the maximum modeled concentration. See the RTC document for more detailed discussion of mobile sources in the area and how the background concentration was estimated.

Commenters argue that the Phillips 66 refinery plans to shut down and that EPA should consider the future potential reductions in emissions when determining whether the area has failed to timely attain the NAAQS. LDEQ included Phillips 66 refinery, located approximately 27 km south of Rain, in the modeling provided as part of the 2018 attainment demonstration SIP.[5] It was operating at the time and Phillips' actual emissions were included in the attainment demonstration modeling as a background source in 2018. The EPA disagrees with the commenters, any emissions reductions that occurred after Oct. 4, 2018 at Phillips or any planned future emission reductions, including facility shutdowns, cannot be considered in determining if the area failed to attain by the October 4, 2018 attainment date.

2. Monitoring Data

Comment: The commenters state that the St. Bernard area monitors Meraux and Chalmette Vista show significant and continuous air quality improvements in both the monitored design value (DV) for SO_2 (which according to commenters now shows attainment) and the number of exceedances of the one-hour SO_2 NAAQS. Commenters indicated that compared to data from the same monitors during the 2009–2015 period, there has been dramatic improvement to the air quality in St. Bernard Parish due to the reductions in SO_2 from multiple sources, including the Rain CII Carbon's Chalmette facility. Specifically, commenters indicate the Meraux monitor one-hour design value for 2018–2020 is about 10 percent of the SO_2 NAAQS and the design value for the Chalmette Vista monitor for the same period is close to half the 75-ppb standard. Commenters included DVs for both monitors in St. Bernard Parish up to the 2018–2020 DVs to support their statements. Commenters argue that EPA should consider these improvements and downward trend of concentrations at the monitors, including the number of exceedances and the overall design values, in its determination as evidence that the St. Bernard area attained the SO_2 NAAQS, as this data must be considered as probative and significant in any weight-of-evidence approach.

In addition, EPA received several comments discussing the location of the monitors and arguing against EPA's position in its proposed determination that the monitors are not located in the area of maximum concentration for SO_2.

[3] *See* 40 CFR part 51 Appendix W—Guideline for Air Quality Models and *Appendix A, Modeling Guidance for Nonattainment Areas* of the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* available in the docket for this action.

[4] On average a relatively low background value of 6.27 ppb.

[5] EPA's Attainment Demonstration Supplemental TSD pages 7–8, 14–16.

These comments are summarized in the following three paragraphs.

One commenter argues that it is unlikely that air quality is significantly different within St. Bernard Parish at other locations due to the proximity of the monitors to the major industrial sources—for example, the Chalmette Vista monitor is located close to Rain CII Carbon and Chalmette Refining. Commenters state that if EPA cannot consider monitoring on its own to determine that the St. Bernard Parish area attained by the attainment date, it can use monitors in close proximity to major sources as strong evidence that the area is in attainment.

EPA received comments that used the basis for the original siting of the monitors in St. Bernard as a reason for why these monitors are representative of air quality in the area and therefore indicative of the area's attainment. These comments indicated that EPA did not explain why the Chalmette Vista or Meraux monitors are not located in the area of maximum concentration as EPA considered close proximity to sources as a major factor when the agency approved the locations of five new SO_2 monitors in other parishes in Louisiana in 2016. In addition, based on prior SIP documents, commenters argue EPA used the Chalmette Vista and Meraux monitors to designate St. Bernard Parish as nonattainment with the 1-hour SO_2 NAAQS.

Another commenter criticized EPA's basis for its proposed determination, stating that EPA ''relies heavily'' upon the argument that the Chalmette Vista monitor is not located in the area of maximum concentration. The commenter countered EPA's position by indicating that the area of maximum concentration is located in the Jean Lafitte National Historical Park and Preserve, Chalmette Battlefield, which is a wide expanse of uninhabited land. Commenter continued that LDEQ has argued in discussions with EPA that the Chalmette Vista monitor is located in a neighborhood directly across from the Rain CII facility, making it better suited toward the protection of the residents.

Response: EPA considered and reviewed the Chalmette Vista and Meraux monitoring data as part of our determination. While we take note of the downward trends raised in the comments, we disagree with the commenters' statements that the monitoring data is sufficient evidence the area attained by the attainment date. As we stated in our proposed action, although the one-hour SO_2 design values at the Chalmette Vista monitoring site located within the St. Bernard area show a downward trend of SO_2 concentrations less than 75 ppb for the one-hour standard beginning with the 2015–2017 design value, this monitor is not located in the area of maximum predicted concentration, and therefore cannot be used, on its own, to determine that the St. Bernard Parish area attained by the attainment date. Monitors can only provide a measurement of the air quality at a specific location and do not necessarily indicate whether the SO_2 standard has been attained throughout the area. The commenters did not provide sufficient details but rather provided an unsupported claim that monitoring or monitoring along with other pertinent information should be enough to base a decision that the area reached attainment.

As included in our TSDs for approval of the attainment demonstration SIP, we did note that monitored DVs had decreased at the Chalmette Vista and Meraux monitors.[6] We also note, however, in Figure 6 of EPA's Supplemental TSD that the maximum modeled DV was to the west of Rain with a value of 190.8 μg/m³ (97% of the NAAQS); Figure 6 also includes concentration isopleths in the area of the Chalmette Vista monitor, indicating the modeled DV near the monitor location was approximately 110 μg/m³ which shows that the Chalmette Vista monitor is not sited to pick up the maximum DV in the area and is instead located in an area modeled to be approximately 58% of the maximum modeled DV.[7] From the modeling, it is clear that the Chalmette Vista monitor and the Meraux monitor are not in the anticipated areas of maximum modeled design concentrations, and that contrary to the commenter's assertion, there are significant concentration gradients near the Rain facility. This is a logical result; when winds are blowing from the east, the emissions of the Valero refinery and Chalmette refinery are in line with Rain, and therefore, the emissions from all three sources combine to result in the maximum concentrations being located to the West, downwind of Rain (the largest emitter of the three sources). When the wind is blowing Rain's emissions to the North towards the Chalmette Vista monitor, emissions from Chalmette refinery or Valero refinery are not in alignment such that emissions from these two facilities could combine with Rain's emissions to result in a maximum monitored or modeled value in the area around the monitor. For situations where winds are blowing from the West and emissions from the three facilities overlap to the east of the facilities, the emissions from the largest SO_2 source (Rain) have already been transported several miles and will have experienced dispersion; this causes (1) the concentrations to the east of Valero refinery near the Meraux monitor location to not be as large as when winds are blowing from the east and (2) the maximum area concentrations modeled to be located to the west of Rain. Therefore, the Chalmette Vista and Meraux monitors are not located in the area of the expected maximum DV in the modeling domain and EPA cannot rely upon the monitoring data alone to determine the area has attained; this is the case even considering the proximity of the monitors to major stationary sources of SO_2 and other relevant information in the St. Bernard area.

With regard to comments concerning LDEQ's siting of new SO_2 monitors in other parishes in Louisiana in 2016 based on close proximity to sources, these monitors were sited for the purpose of characterizing 1-hr SO_2 air quality for designation purposes under the Data Requirements Rule (DRR)[8] and EPA provided guidance[9] to use modeling to identify the location or locations of ambient SO_2 concentration maxima to inform monitor siting. LDEQ did site SO_2 monitors in 2016 based on proximity and modeling to try and identify the area where maximum DVs might be monitored. However, monitor siting can be complicated, and siting of monitors can be restricted by availability or accessibility of a suitable location, including obtaining permissions from landowners and finding necessary support services, such as power. These real-world logistical constraints can sometimes make it impossible to site monitors at specific locations that may be predicted by modeling to be locations of expected maximum concentrations.

The commenter specifically referred to LDEQ locating 5 monitors in 2016 around other facilities in Louisiana outside of St. Bernard Parish as part of the DRR monitoring. The commenter believes that because these monitors were located near the sources in those areas, and 4 of these 5 monitors had

[6] EPA's Attainment Demonstration Supplemental TSD pages 5–6.

[7] EPA's Attainment Demonstration Supplemental TSD pages 24–25; EPA's Attainment Demonstration TSD including pages 35–36.

[8] August 21, 2015, Final Rule, ''Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (NAAQS),'' 80 FR 51051.

[9] SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document, February 2016. Available in the docket for this action.

measured 2017–2019 DVs less than half of the NAAQS such that they were eventually removed, that this information provides support that the Chalmette Vista and Meraux monitors DVs are representative of the maximum DV in the St. Bernard area since they were also located near the source. As discussed elsewhere, the Chalmette Vista and Meraux monitors were installed prior to the promulgation of the 1-hr SO_2 NAAQS, and no modeling was done at the time to confirm if these monitors were near the location of the expected modeled maximum design values whereas, as discussed, the goal of the DRR was to locate monitors close to the point of maximum expected concentration. The fact that DRR monitors in other areas were sited near a source(s) based on modeling and other considerations and had low 2017–2019 monitored DVs does not support the comment that the Chalmette Vista monitor and Meraux monitor are representative of the maximum DV in the St. Bernard Parish and does not provide sufficient evidence that all portions of the area meet the standard. Instead, available modeling shows that the Chalmette Vista monitor and Meraux monitor are not in the area of maximum projected concentrations and thus cannot provide sufficient evidence that the entire area attained. We also note that for all of these DRR monitored areas, there are differences that exist between modeling of a historical period (2012–2014 in this case) and the monitor data that was gathered from 2017–2019 including differences in meteorology and emissions of the primary and nearby sources that can result in large differences between modeled values [10] and monitored values, including the magnitude and location of the maximum concentration in the area.

As mentioned by the commenter, the Chalmette monitor was sited prior to issuance of the DRR based on consideration towards characterizing air quality in the Chalmette neighborhood near the source, providing relevant data on population exposures, but was not based on an evaluation of the location of the maximum ambient concentrations in the area.[11] Furthermore, the additional controls installed, lower emission limits, and stack parameter conditions (temperature and flow rate) captured in the August 2018 AOC for Rain sources combined with the other enforceable reductions at other facilities resulted in significant changes that impacted the dispersion of emissions from Rain and the modeling results and where the maximum modeled concentrations occur in the area. We also note that while the Chalmette monitor data was the basis of the nonattainment designation in 2013,[12] that data showed that there were measured hourly concentrations above the level of the standard at the monitor during that time period (2009–2011) but did not provide any information as to the location or magnitude of the maximum concentration in the Parish and whether the monitor was located in the Parish's area of maximum concentration. Even though a monitor may measure hourly concentrations above the standard, it does not demonstrate that the monitor is sited in an area of maximum concentration. In other words, it only demonstrates that the concentration it measures is above the level of the standard, and, absent other information, leaves open the possibility that other locations in the area may be experiencing even higher concentrations. Furthermore, since the area was designated nonattainment in 2013, there have been changes such as (1) changed stack parameters, (2) installation of controls, and (3) reductions in emissions limits at Rain and other facilities which have resulted in changes to the air shed and where maximum concentrations will occur as of the October 4, 2018 attainment, thus further highlighting the need to rely on modeling to identify the location of the maximum design value in the St. Bernard Parish area.

Commenter argues that the maximum modeled DV is located in the Jean Lafitte National Historical Park and Preserve, Chalmette Battlefield, that it is an uninhabited area, and that the Chalmette Vista monitor is located in a neighborhood directly across from the Rain CII facility, making it better suited toward the protection of the residents. Depending on the model run for the different Rain operating scenarios, the location of the modeled maximum concentration is in slightly different locations, and in the Supplemental TSD, the maximum modeled value was not located within the Chalmette Battlefield but further to the West.[13] Regardless of the exact location of the maximum modeled DV, EPA's ambient air standards apply to the entire nonattainment area, in all areas that are considered ambient air. Ambient air is defined in 40 CFR 50.1(e) as ''that portion of the atmosphere, external to buildings, to which the general public has access.'' Presence of permanent residences is not a condition of whether the NAAQS applies in an area, and EPA's attainment demonstration and determination of attainment is based on the NAAQS being met at all potential ambient air locations in the nonattainment area regardless of population level. While EPA acknowledges that the Chalmette Vista monitor may be better suited towards determining exposure of some nearby residents, it is not representative of concentrations of other neighborhoods in other nearby areas, as we found modeled concentrations located at other populated areas that were higher than values modeled at the Chalmette Vista monitor. In conclusion, the Chalmette Vista monitor data is not representative or determinative of whether the entire nonattainment area has attained the NAAQS.

3. Attainment Demonstration Model Performance

Comment: EPA received a number of comments on the attainment demonstration's modeling for the St. Bernard area. Commenters argued that the conservative nature of the modeling submitted by LDEQ is evidence that EPA should consider as a factor when determining whether the St. Bernard area attained the SO_2 NAAQS. Specifically, commenters indicated AERMOD modeling is conservative by nature because it was based on conservative inputs, representative of reasonable worst-case conditions. Commenters also stated AERMOD modeling typically predicts impacts higher than air quality monitoring, often significantly higher than nearby monitoring sites, and that prior comments to LDEQ's proposed SIP reference studies that illustrate that AERMOD overpredicts SO_2 concentrations (*see* LDEQ EDMS DocID 10860978, pp. 47–171). Commenter summarized that AERMOD includes use of allowable peak emissions instead of actual emissions and worst-case meteorological data and is conservative

[10] With the exception of the monitor sited in Calcasieu Parish, the modeling performed in 2016 to site these monitors was done in a normalized mode, such that absolute values were not generated so it is unclear from the modeling results, whether the absolute values were modeled above, near, or significantly below the 1-hr SO_2 NAAQS.

[11] Chalmette Vista and Meraux monitors began operations in 2006 and 2007 respectively and were not sited based on modeling for the 2010 1-hour SO_2 NAAQS, so neither monitor would be expected to be representative of maximum 1-hour SO_2 NAAQS.

[12] *See* 78 FR 47191 (August 5, 2013).

[13] See Supplemental TSD page 25 including Figure 6. Figure 6 provides modeled results for the Rain Cold Stack standalone high operations scenario, and the maximum DV was located across the river in Jefferson Parish near a neighborhood with permanent residents.

because of these factors, and EPA should weigh this conservativeness with other factors in making its determination. Multiple commenters indicated that despite the use of an overly conservative model, LDEQ's modeling demonstrated that the proposed controls resulted in attainment of the 1-hour SO_2 NAAQS. A commenter also indicated that the modeling used the maximum PTE and the likelihood that all three major contributing sources would emit at their PTE at the same time is minimal. Commenter also indicated that facilities' actual emissions have consistently been below their PTE.

Commenter indicated that other evidence instead supports, rather than contradicts, the modeling results. Commenter referred to Table 2 in the Proposed Finding of Nonattainment, which shows the modeling results that modeled the maximum potential to emit (PTE) of all the major sources contributing to the ambient design values, including three different operating scenarios for Rain, the largest SO_2 source in St. Bernard Parish.

Commenter indicated the modeling essentially ''double-counted'' emissions from the out-of-parish, distant, Phillips 66 source at Alliance, Plaquemines Parish. Citing the Supplemental TSD for our approval of LDEQ's attainment demonstration, commenters argue the actual 2017 emissions from Phillips 66 were included in the model as a conservative measure even though accepted EPA protocols did not require Phillips 66 emissions to be included. Commenters then argue that these emissions were double counted when they were also accounted for in the ''background'' values from the Meraux monitoring data.

A commenter claims that EPA's required modeling protocols result in very conservative predictions of ambient SO_2 levels (*i.e.,* overpredicted levels), stating that under the EPA's SO_2 NAAQS Data Requirements Rule (DRR), LDEQ placed ambient SO_2 monitors in five locations outside the St. Bernard area that began monitoring by January 1, 2017, and the modeling for these other areas indicated that levels would be well above the 1-hour SO_2 standard. However, as evidence that the modeling is very conservative, commenter indicated that at four of these locations, more than three years of monitoring data collected showed ambient levels at less than 50% of the standard, and pursuant to EPA's monitoring requirements EPA subsequently approved discontinuation of monitoring at those locations, referring to the LDEQ 2020 Louisiana Annual Network Monitoring Plan submitted to EPA on April 5, 2020.

Commenter argues that based on these other monitors not in St. Bernard Parish, the modeled predictions of high ambient SO_2 levels shown in the modeling done by LDEQ and EPA for St. Bernard Parish is likewise very conservative. Commenter concluded that where such modeling predicts attainment and such predictions are supported by actual monitored design values at nearby monitors showing levels below the model predictions, the modeled predictions should be accepted as prima facie evidence of attainment.

Commenter argues that although EPA characterizes the modeled values in the SIP attainment demonstration as being ''close'' to the 1-hour SO_2 NAAQS, even the worst operational scenario had a design value at least 2 ppb below the standard (3% below). Furthermore, some other operational scenarios yielded worst case predictions that were 11% and 5% below the standard, respectively. The commenters seemed to be indicating that there is some head room in the modeling results such that any non-compliance with emission limits or stack parameters may not lead to actual concentrations that would result in exceedances or violations of the 1-hour SO_2 NAAQS.

Response: We disagree with the comments that the AERMOD model and EPA's modeling protocols result in ''very conservative'' overpredictions of ambient SO_2 concentrations. As discussed in the proposed rule, LDEQ used the most recent version of AERMOD and followed EPA's guidance for SIP modeling for SO_2.[14] The attainment demonstration modeling is based on PTE/allowable emissions (*i.e.,* the maximum permitted amount) and stack parameters for different operational stages at the Rain facility, including stand-alone operations for the waste heat boiler and the pyroscrubber and transition stages between the two modes of operation.[15] Consequently, the attainment demonstration modeling reflects the maximum level of emissions and ambient concentrations that could occur while sources meet the SIP emission limits and required stack parameters, as required by the CAA and our regulations. When EPA approved this modeling demonstration for this purpose, such demonstration was not the subject of a challenge, and EPA is not reopening the fundamental conclusions about the modeling that it previously reached in this action. Again, the issue is Rain's inability to comply with the emission limits and stack parameters in the attainment demonstration SIP which the attainment modeling indicated were necessary for the area to attain.

AERMOD is the regulatory air dispersion model[16] for use in assessing near field (within 50 kilometers) criteria pollutant ambient air concentrations for air quality analyses for regulatory purposes. AERMOD has been subjected to an extensive, independent peer review. Analysis of AERMOD's performance with field study data sets indicates that AERMOD performs best for elevated point sources such as Rain and the other larger SO_2 emission sources in the modeling and provides maximum modeled design values with an acceptable degree of accuracy. The result is a slightly conservative and protective estimation of maximum modeled DVs for these types of sources, not, as commenter characterizes it, an overestimation which always results in monitoring showing attainment. While AERMOD might be slightly conservative in model predictions, modeling for attainment demonstrations cannot have tendencies to underestimate concentrations as that would result in violations of air quality standards going undetected and would not be protective of public health. EPA promulgated AERMOD as the preferred model to characterize impacts from emission sources for 1-hour SO_2 maximum DV concentrations (and several other NAAQS pollutants) in 2005 and it has been used in numerous designations for SO_2 and Lead, numerous attainment demonstration SIPs for criteria pollutants such as SO_2, $PM_{2.5}$, and Lead, as well as in numerous permit application analyses. See the RTC document for full analysis of specific comments on AERMOD modeling performance.

EPA's 40 CFR part 51 Appendix W, Guideline on Air Quality Models, requires the use of short-term maximum PTE/allowable emissions when modeling the primary source(s) in the nonattainment area (see Section 8 including Table 8–1) including the source(s) that are being evaluated for an emission limit. Since the 1-hour SO_2 NAAQS is an hourly standard that is based on the three-year average of the 99th percentile of the annual distribution of daily maximum one-hour average concentrations, it does not take many modeled or monitored

[14] See *Appendix A, Modeling Guidance for Nonattainment Areas* of the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* available in the docket for this action.

[15] 86 FR 69213.

[16] 40 CFR part 51 Appendix W—Guideline for Air Quality Models.

exceedances to result in violations of the standard. For these reasons, it is necessary to model the short-term (hourly) maximum PTE/allowable emission rate limits for sources such as Rain, Chalmette Refinery and Valero Refinery. LDEQ's attainment demonstration SIP included revised short-term PTE/allowable emission limits and stack parameters for Rain, along with the short-term PTE allowable emission limits for Chalmette Refinery, and Valero Refinery. It was these limits that Rain did not comply with during certain periods making it not possible to find the area had attained by its attainment date.

Several commenters compared actual annual emissions to annual PTE/allowable emissions and indicated that actual emissions have been lower than PTE/allowable emissions at Rain, Chalmette Refinery, and Valero Refinery. Regardless of annual actual emissions, the sources likely operated at higher hourly emission rates much of the time and had the legal authority to operate up to the maximum hourly PTE/allowable emission rates. Moreover, at issue is that Rain, in fact, did not comply at all times with its required allowable short-term emissions limits and stack parameters in the AOC which the attainment modeling showed was necessary for the area to attain the NAAQS.

Contrary to the commenters' claims, we did consider how actual emissions may have differed from what was modeled in our evaluation of the evidence, including the modeling results. When relying on a modeling demonstration based on allowable emissions for purposes of determining attainment by the attainment date, EPA looks to the emission limit(s) and any other limits (stack parameters in this case) that were adopted and whether the relevant source or sources were complying with those modeled limits prior to the attainment date. In other words, EPA looks to whether the state has demonstrated that the control strategy in the SIP has been fully implemented. One of the ways to determine if the plan was fully implemented is to review compliance records to determine if the control measures have been implemented as required by the approved SIP. This is necessary because a modeling demonstration based on allowable emissions alone is not sufficient to verify factual air quality status without the supporting information on compliance with those emission limits and associated stack parameter limits. We discuss facility compliance in more detail in the following section (subsection II.A.4). As explained in subsection II.A.4, because emissions at times exceeded the allowable limits and/or stack parameters failed to meet the minimum requirements that were modeled, LDEQ's modeling is not conservative and actual concentrations would be expected to be higher than LDEQ's modeling results. We note that Rain also underestimated pyroscrubber emissions (discussed further in this response and the next response) which would further contribute to underestimation of actual concentrations when pyroscrubber emissions occurred.

In sum, from the available information, EPA cannot determine with certainty that the area attained the NAAQS as the emissions and stack parameters at times fall outside the limits and conditions that were modeled in the approved attainment demonstration. The noted violations of the permit limits or underestimated emissions would be expected to result in higher concentrations than were modeled and may have resulted in exceedances and violations of the one-hour SO_2 NAAQS in areas other than the monitored location.

In our evaluation, we focused on the time period between adoption of the AOC on August 2, 2018, and the attainment date of October 4, 2018. For that approximately 2-month period, Rain identified 7 days where they were not in compliance with either emission limits and/or stack parameter limits in the AOC.[17] Modeling analyses, including many exploratory model runs performed by EPA and/or LDEQ, were conducted to help establish the 11 operational scenarios with associated emission limits and stack parameter limits in the AOC. The modeled concentrations were sensitive to changes in the stack parameters of stack air flow and minimum temperature. Changes to these factors impact the ground-level concentrations by changing how high the plume lofts and how quickly it reaches ground levels. Decreases to stack flow rate and/or stack temperature would be expected to result in decreased dispersion and increases in ground-level ambient air concentrations and potentially move where the maximum modeled concentrations occur. Therefore, if actual air flow and/or stack temperature is below the minimum values in the AOC that were modeled, the maximum modeled design value in the attainment demonstration modeling results is no longer conservative and is likely an underestimation of the actual maximum DV due to the reduced dispersion as a result of less than minimum stack flow or temperature. For the different modeling scenarios in the attainment demonstration, Rain's emissions were the largest contributor to the maximum modeled design values in the modeling domain. Therefore, the described changes to Rain's dispersion characteristics coupled with an underestimation of actual pyroscrubber emissions (for scenarios with pyroscrubber emissions) would be expected to increase the maximum modeled DVs and could result in modeled DVs that are above the 1-hour SO_2 NAAQS. On 6 of these 7 days, Rain reported emitting below the required minimum stack flow rate for the pyroscrubber stack for transitional scenarios.[18] Emitting at flow rates below the minimum airflow requirements would result in higher ambient air impacts from pyroscrubber stack emissions and the maximum design value would be expected to increase. A number of scenarios were established to model the air quality impacts when Rain transitioned its operations from full operation through the pyroscrubber stack to operation though the heat recovery stack.[19] Since in all of these transitional scenarios of emissions, the emissions from Rains' pyroscrubber stack had a large impact on the maximum modeled design values, the periods when Rain was not meeting minimum stack parameters raise a real concern that the attainment demonstration modeling results do not reflect the situation that actually occurred and do not reflect a conservative assessment of the actual maximum modeled design value at the attainment date. If these non-compliance periods with lower flowrates and/or temperatures were modeled, they would have a higher maximum modeled concentration value than the AOC required stack parameters would allow for during the same modeled period and would likely show a violation of the NAAQS. Furthermore, as discussed elsewhere, pyroscrubber emissions were underestimated and actual emissions, if modeled, would also result in a higher maximum modeled concentration than the AOC emission limits would allow for during the same modeled period and would likely show a violation of the NAAQS.

[17] See deviations listed in the semiannual monitoring report for July 1–December 31, 2018 included in the docket for this action.

[18] Transitional scenarios are operational scenarios identified in the AOC that have emissions from both pyroscrubber and waste heat boiler stacks.

[19] See EPA's Attainment Demonstration Supplemental TSD pages 20–27.

Without knowing the exact parameters and pyroscrubber emissions we cannot model these actual stack parameters and emissions and confirm with certainty that the value would model a violation, but we do know the modeling for the attainment demonstration was very sensitive to stack parameters and pyroscrubber emissions such that it is likely that these excursion periods would have resulted in some exceedances and potentially violations of the NAAQS. Because of this, the EPA cannot determine with certainty that the area attained the NAAQS. As discussed further in our responses in other parts of this notice, the form of the 1-hour SO_2 NAAQS is very sensitive to a small number of exceedance or near exceedance hours within days each year (on the order of 4 days a year, on average), so having 7 days of non-compliance in a two-month period is concerning and threatens the ability to attain the NAAQS.

As the commenter noted, some of the attainment demonstration modeling for these transition scenarios resulted in DVs that were 11% below the NAAQS (range of all transition stages was 5% to 15% below the NAAQS) implying the modeling had some margin of safety. As discussed in the next response (subsection II.A.4), the 2019 stack test results indicate that pyroscrubber emissions have been underestimated by at least 10% and up to approximately 60% at times,[20] which would remove much, if not all, of the head room even without factoring in dispersion worse than what was modeled due to not complying with minimum stack flow and temperatures.

In addition, when the facility is in its transition stages, the current equation to determine air flow volume through the hot stack underestimates the amount of flow, resulting in further underestimation of pyroscrubber stack emissions. We note that Rain has recently proposed changes to the emissions equation and stack flow equation are based on Rain's analyses of the existing equations to stack tests in 2019–2021. This change in the emissions equation and stack flow equation proposed by Rain is not before EPA or LDEQ for official review. We note that it does support EPA's concerns that the emissions and stack parameter limits in the August 2, 2018 AOC were not implemented at all times and actual emissions may have exceeded the allowable emission rates at a higher frequency than reported in the compliance reports. If these different operating parameters and/or higher emission rates were modeled, the maximum modeled design values would be higher, and, therefore, the existing approved modeling results are not conservative. Without knowing the exact parameters and amount of higher pyroscrubber emissions we cannot model these actual stack parameters and emissions, but we do know the modeling for the attainment demonstration was very sensitive to stack parameters and pyroscrubber emissions such that it is likely that these excursion periods would have resulted in some exceedances and potentially violations of the NAAQS. Because of this, EPA cannot determine with certainty that the area attained the NAAQS.

The Phillips 66 refinery (Phillips) south of Rain was included in the modeling that LDEQ provided as part of the attainment demonstration SIP and is located approximately 27 km south of Rain.[21] Phillips was operating at the time, and Phillips' actual emissions were included in the modeling as a background source at the time the attainment demonstration was submitted in 2018. Since the maximum modeled concentrations were to the West of Rain, even if the background monitor value included any impacts from Phillips 66, the modeled impacts from Phillips emissions would not be transported to add to the maximum modeled concentration; this is due to Phillips not being located upwind (East or West) of Rain, which means there is no double-counting of Phillips emissions impacts to the maximum modeled DVs in the modeling for the different operational scenarios.

See the RTC and our response to the previous comment in subsection II.A.2 about monitors in other areas and how the information provided is not sufficient to understand how modeled concentrations for the 2012–2014 period and monitored values from 2017–2019 compare.

4. Facility Compliance

Comment: The commenters state that EPA should consider the overall level of compliance by the Rain facility with its Title V permit and the AOC agreement in its determination of whether the St. Bernard area has attained the SO_2 NAAQS. The commenter disagrees that the Rain facility has not achieved a high degree of compliance with the SO_2 emissions limits set forth in its current Title V Operating Permit and the AOC agreement. Commenter continues that Rain has operated below their sitewide permitted SO_2 emission limit most of the time for the past four years in addition to operating below permitted limits of individual sources most of the time. The commenter also claims that the compliance history of the waste heat boiler/baghouse and the pyroscrubber stack with the permit and AOC limits in 2020 and 2021, coupled with the relatively few excursions of operating parameters that occurred for the period August 2, 2018, through October 4, 2018, show that EPA's justification for its proposed determination is inadequate.

In reference to annual emissions, the commenter indicated the facility's permitted SO_2 emissions for the entire site (*i.e.,* all sources of SO_2 emissions at the facility) are currently 2,626 tpy and that Rain has operated well below this sitewide annual total over the past four years in addition to annual SO_2 limits for individual sources. Commenter continued that the current Title V permit also includes short-term SO_2 emissions limits for the waste heat boiler/baghouse (EQT 0003) and the pyroscrubber stack (EQT 0004). The waste heat boiler/baghouse (EQT 0003) has a maximum 510.00 lb/hr SO_2 limit and the pyroscrubber stack (EQT 0004) has a maximum 2,022.70 lb/hr SO_2 limit.

Commenter indicates that the AOC Agreement, entered between LDEQ and Rain CII Carbon and effective on August 2, 2018, includes 11 distinct emissions limits for SO_2 associated with the waste heat boiler/baghouse (EQT 0003) and/or the pyroscrubber (EQT 0004). Commenter stated that these emissions limits vary depending on operating conditions of the rotary kiln and associated process equipment and was established based on flow and temperature parameters. Additionally, the AOC Agreement also includes various monitoring, reporting, recordkeeping, and testing requirements for the waste heat boiler/baghouse and the pyroscrubber to ensure compliance with the underlying emission limits. Commenter asserted that an excursion of stack parameter limits such as flowrate or temperature parameter (for one of the 11 distinct emission limits) does not necessarily equate to an exceedance of an SO_2 emissions limit and therefore EPA does not know for sure that an exceedance of the NAAQS level would have resulted.

Commenter also provided information about the waste heat boiler/baghouse (EQT 0003) operations for 2020 and first half of 2021, indicating it was only out

[20] See Table 5 of the 2019 Stack Test Report, available in the docket for this action.

[21] EPA's Attainment Demonstration Supplemental TSD pages 7–8, 14–16, found in the docket for this rulemaking. Modeling results in modeling files for other operating scenarios are included in the Supplemental TSD.

of compliance for 30 hours in 2020 and 15 hours in the first half of 2021 and that it was in in compliance more than 99.6% of the time it operated. Commenter noted that the Title V permit limits the pyroscrubber stack (EQT 0004) to a maximum of 500 hours/year on a 12-month rolling average and that the facility has not exceeded that limit. Regarding pyroscrubber stack operations for 2020 and the first half of 2021, commenter indicated Rain was only out of compliance for 72 of 7,234 hours in 2020 and 78 out of 4,018 hours for the first half of 2021 resulting in compliance 99.0 percent of the time in 2020 and 98.1 percent of the time in the first half of 2021.

Commenter summarized that except for very limited periods, the Rain facility has not exceeded the short-term SO_2 emissions limits over the past four years, indicated by the facility's Title V semiannual deviation reports and annual compliance certifications. Commenter noted that the Title V permit requires Rain to operate and maintain a SO_2 continuous emissions monitor (''CEMS'') for the waste heat boiler/baghouse (EQT 0003) to ensure compliance with these limits (See, Specific Requirement Nos. 55–58 and 80 in Title V Permit No. 2500–00006–V4).

Commenter (Rain) also indicated EPA should consider the pending amendment to the currently effective AOC Agreement entered on August 2, 2018. Commenter indicated that Rain has conducted performance tests on the pyroscrubber stack on March 8–9, 2018, and July 7–8, 2018, and after implementation of the AOC Agreement. Rain CII Carbon conducted additional performance tests on March 13–14, 2019, July 22–23, 2020, and September 15–19, 2021. Based on these performance tests, Rain has proposed an amendment to the AOC Agreement that would revise certain flow and temperature operating parameters. Commenter continued that Rain's proposed amendment, currently under review by LDEQ and preliminary review by EPA, will further reduce the self-reported flow and temperature excursions for the waste heat boiler/baghouse and pyroscrubber emissions points. Commenters assert that EPA should take these pending proposed changes to the AOC Agreement into account as a part of its determination whether the area attained the 2010 SO_2 NAAQS.

Commenter LDEQ indicated it would concede that Rain has not adequately met the emission limits in the AOC. However, LDEQ then claims that all equations used to establish those limits were based upon theoretical modeling scenarios contrived from the facility's operations and, therefore, it is difficult to predict every possible operating combination for this facility. LDEQ argues that modeling the periods when the facility did not meet the established limits would present a better picture of whether the area was attaining, rather than assuming that the limited number of modeled combinations are the only possible combinations which would pass modeling. LDEQ stated that it continues to model new combinations of emission limits and stack parameters for Rain's proposed amendment to the AOC Agreement entered on August 2, 2018, and LDEQ and EPA [22] are currently providing feedback on those elements. LDEQ indicated that there are numerous variations of operating parameters that result in passing models with new stack operating parameter ranges and revised emission limits that are under review.

Response: With respect to comments that EPA should consider the compliance period as a whole from 2017 through 2021, EPA disagrees. EPA is required to determine if the area's air quality attained or did not attain by the October 4, 2018, attainment date. As part of that determination, EPA considers whether control measures approved in the attainment SIP were fully implemented by that date. In our proposal, we provided evidence that Rain has struggled to meet the SIP-approved AOC limits in the period up to the October 4, 2018 attainment date to support our proposed finding of failure to attain. We note that the commenters have provided additional information that indicates the Rain facility has continued to have non-compliance periods past the October 4, 2018 attainment date and that Rain is working with LDEQ and EPA to revise the emission rate limits and stack parameters limits for different operating scenarios, modify the emission calculation formula for the pyroscrubber stack, and complete revised modeling incorporating these proposed changes.[23] (We note that when referring to the waste heat boiler/baghouse (EQT 0003) we will shorten to ''waste heat boiler'' and for the pyroscrubber (EQT 0004) we will shorten to ''pyroscrubber.'') While the period following the October 4, 2018 attainment date is not the basis for EPA's final determination, this additional information is illustrative that Rain did not demonstrate full compliance with the August 4, 2018 AOC limits both in the period up to October 4, 2018, and after October 4, 2018, which further supports EPA's final determination that the attainment demonstration SIP for St. Bernard Parish that EPA approved had not been fully implemented. This EPA approved attainment demonstration SIP included necessary requirements for the Rain facility that formed the basis of the modeling demonstration in the SIP and EPA's approval.

With respect to the comment that Rain had complied and been below the annual emission limits for the last four years (facility total and unit limits) we note that this is not of central importance in determining if the area has attained the 1-hour SO_2 NAAQS. As discussed in Section II.A.2, determination of attainment could be based on as few as 12 hours that have modeled/monitored exceedances or near exceedances at a receptor/monitor in a 3-year period.[24] Compliance with annual total emissions does not take into account short term emission rates variation and whether emission limits (defined by certain stack parameter regimes) are being complied with for all operating hours. Therefore, compliance with annual tpy emissions is not germane to determining if the area has attained. Again, the form of the standard is such that as few as 12 hours or less of modeled exceedances or near exceedances could result in a modeled DV that does not attain the standard; therefore, even a small number of short periods of non-compliance with an emission limit or the required stack parameters can result in a violation of the standard.

Prior to LDEQ's attainment demonstration SIP proposal in 2017 and leading up to the revised limits in the August 2, 2018 AOC; EPA, LDEQ, and Rain continued to conduct modeling to refine the operational scenarios and identify emission limits for each scenario that were specific to stack volume flow ranges and temperature ranges because the modeling was very

[22] The EPA wishes to clarify that this language summarizes what the commenter stated. The EPA has not received a formal submittal from LDEQ of a revised AOC. The EPA is only providing preliminary, early engagement support here as it does with all technical matters when requested by the state.

[23] See deviations in 2021 first half Compliance report, 2021 Stack Test report, and Email (with attachments) from LDEQ to EPA on December 8, 2021, that provided updated analysis of pyroscrubber emission formula compared with stack test data, proposed new emission and stack parameter limits or to be included in a future AOC revision, and updated modeling. These are included in the docket for this action.

[24] The 1-hour SO_2 Design Value is an average of the yearly 4th High maximum daily 1-hour SO_2 value of each year, thus the DV is based on 12 values at a receptor/monitor that are either exceedances or near the standard that when the average of 3 consecutive years results in a DV that violates the 1-hour SO_2 NAAQS.

sensitive to the combination of emissions and the stack parameter ranges; outside of the specific stack parameters for these operational scenarios, the emission rates would often model nonattainment.[25] The revised August 2, 2018 AOC established revised emission limits with specific temperature ranges and stack flow ranges that Rain believed they could comply with. These limits are not theoretical ranges as they were based on the combination of previous stack tests and input from Rain, which led to established ranges that cover the combinations of emissions and stack parameters that could realistically occur. The stack parameter ranges were modeled to establish what emission limits would not result in modeled violations (DVs above the 1-hour SO_2 NAAQS), and the stack parameters define what is the applicable emission limit. These updated AOC limits in the August 2, 2018 AOC and attainment demonstration modeling results, highlight the need for Rain to fully implement and achieve strict compliance with the emissions limits and associated stack parameter ranges in order for St. Bernard Parish to attain the NAAQS. We also note that prior to August 2, 2018, Rain was not operating in compliance with the limits in the previous AOC, and this was a principal reason for the establishment of new limits in the revised August 2, 2018 AOC.

Commenters did not contest that Rain was not in compliance with AOC limits for 7 days in the period from August 2, 2018, through October 4, 2018; commenters only argued that the period of noncompliance was a short amount of the time, and that the facility was in compliance most of the time. However, EPA would again like to emphasize that given the form of the 1-hour SO_2 standard discussed earlier, a very small number of periods of non-compliance with the established AOC limits (as few as 1 hour per day for 4 days in a year, on average) can result in modeled and/or monitored violations, and, therefore, having 7 days of non-compliance in less than 2 months can result in several modeled exceedances of the 1-hour SO_2 NAAQS. The model demonstrating attainment did not assume compliance with the modeling parameters 90% of the time or the majority of the time but all of the time. Modeling results were sensitive to stack parameters and emission rates such that any time the facility was out of compliance there is a high likelihood that an exceedance could occur. Furthermore, as discussed in more detail later in this response, there were likely more times that the facility was not in compliance in the period from August 2, 2018 through October 4, 2018 that were not identified due to underestimation of emissions and/or uncertainty in estimated flow rates. We also note that prior to August 2, 2018, Rain was not operating in compliance with the limits in the previous February 2018 AOC that were also based on different emission rate limits for different stack parameters operational ranges.

Commenter included details about the number of hours of non-compliance for 2020 and first half of 2021 and summarized that Rain was only noncompliant a relatively small percentage of the time during that period. EPA included Rain's 2018 through 2020 semi-annual monitoring reports, where Rain reported non-compliance periods, in the docket for this rulemaking's proposal action. Since the commenter referred to the 2021 semi-annual monitoring report for the first half of 2021, we are also including that report in the docket for this action. While the compliance record with AOC limits since October 4, 2018 is not the basis for our determination of whether the area has attained, it is informative to note that the facility continues to have a number of hours and days where it fails to comply with the August 2, 2018 AOC limits.[26] In 2019, either emissions and/or stack parameters from the waste heat boiler stack were not in compliance with the AOC for 21 hours over 10 days, and either emissions and/or stack parameters from the pyroscrubber stack were not in compliance for 63 hours over 12 days. In 2020, the waste heat boiler limits were not in compliance for 30 hours over 12 days, and the pyroscrubber limits were not in compliance for 72 hours over 14 days. For the first half of 2021, the waste heat boiler limits were not in compliance for 16 hours over 7 days, and the pyroscrubber limits were not in compliance for 78 hours over 12 days. We note that the pyroscrubber is limited to operating 500 hrs/year, so 72 hours in 2020 reflects that it operated at least 14% of the time not in compliance (14.4% based on assumption that it operated up to the allowed 500 hours in 2020). These periods of non-compliance with emission limits and/or stack parameter limits in the August 2, 2018 AOC occur at a frequency that can result in nonattainment and shows the area has failed to fully implement the necessary measures prescribed in the EPA approved nonattainment area SIP.

While commenters de-emphasize the hours of non-compliance and non-compliance with stack parameter limits, these stack parameter limits were based on modeling conducted with these values and associated emission limits for each specific scenario, and non-compliance with stack parameters does result in non-compliance with the AOC limits that were approved in the attainment demonstration SIP. Non-compliance with stack parameter limits creates a situation where the facility's emissions are occurring with dispersion parameters outside what was modeled and that are necessary to demonstrate attainment. For example, for a number of the non-compliant periods, the calculated flow rates for the pyroscrubber stack did not meet the AOC requirements in the August 2, 2018 to October 4, 2018 period, indicating that pyroscrubber stack emissions were released at lower velocities than modeling indicated was acceptable when the flow rates limits were established. Periods of non-compliance with stack parameters is consequential, as lower flow velocities and/or lower stack temperatures result in less dispersion which can result in higher ground-level concentrations than modeled. When this is coupled with pyroscrubber emissions that are more than the allowed limit this also can result in higher ground-level concentrations than what was modeled.

When relying on a modeling demonstration based on allowable emissions for the purposes of determining attainment, the EPA looks to whether the emission limit and other limits were adopted and whether the relevant source or sources were complying with those modeled limits prior to the attainment date. That is, when determining attainment by the attainment date using air quality modeling of allowable emissions, EPA looks to whether the state has demonstrated that the control strategy in the SIP has been fully implemented (in other words, ensuring that compliance records demonstrate that the control measures have been implemented as required by the approved SIP). This is necessary because a modeling demonstration based on allowable emissions is not itself sufficient to show factual timely attainment without

[25] See TSDs and other materials in EPA's approval of LDEQ's 1-hour SO_2 attainment demonstration SIP for St. Bernard Parish in the docket for this action (Docket No. EPA–R06–OAR–2017–0558).

[26] See deviations listed in semiannual monitoring reports for 2018. We also note as that the source continued to experience deviations in 2019, 2020, and 2021. The semiannual monitoring reports for 2018, 2019, 2020, and first half of 2021 as well as the 2019, 2020, and 2021 stack test reports are available in the docket for this action.

supporting information demonstrating compliance with emission limits and associated stack parameter limits.

We note that in our proposal we referred to Rain's 2019 stack test report regarding pyroscrubber stack emissions (Rain referred to this as the ''hot stack'') which indicated that Rain found that ''the AOC hot stack equation underestimates hot stack emissions during most of the transition from hot stack to cold stack'' and ''[d]uring no hour did the combined flue gas flow and temperature meet the description of any transition stage.'' The report then states ''the AOC limits and conditions do not reflect actual emissions conditions and it is difficult to identify the appropriate transition stage,'' before recommending that the August 2018 AOC's flue gas flow rates, temperatures, and emissions limits for transitions stages 1, 2, and 3 be replaced with new conditions.[27] This 2019 stack test was the first annual stack test as required by the August 2, 2018 AOC and provides a comparison of calculated emissions and flowrates for the pyroscrubber stack to actual measured values. Comparison of the calculated SO_2 hot stack emissions to the measured hot stack emissions, shows that actual emissions are underestimated during the transition and were approximately 50% to 60% higher than calculated values for most hours of the transition.[28] The stack test also shows that the calculated hot stack flow rate is at times higher than what was measured during hot stack alone operations and during transition stages. Rain found that the flow rate equation ''both overestimates and underestimates hot stack gas flow rate.'' This stack test demonstrates that not only have emissions been underestimated during the transition periods, but the stack parameters fell outside of the modeled transition stage requirements in the AOC. From the available information, EPA cannot determine with certainty that the area attained the NAAQS as the emissions and stack parameters at times fall outside the limits and conditions modeled in the approved attainment demonstration. The noted violations of the AOC limits and underestimated emissions have likely resulted in exceedances and potentially violations of the SO_2 NAAQS in areas other than the monitored location.

Commenter indicated that EPA should take proposed changes to the AOC being developed by Rain into account as a part of its final rule. EPA is currently involved in the preliminary review of Rain's potential revisions to the AOC, including revisions to the emission formula that Rain uses to calculate emissions from the pyroscrubber stack and potential changes in how flow rate is determined for the pyroscrubber stack and revised modeling using these proposed changes. However, we cannot base a final decision of attainment based on such proposed revisions not officially before us for review as well as there continues to be uncertainty over the effectiveness of such changes and compliance therewith. While our decision is based on whether St. Bernard Parish attained by October 4, 2018, we do note in our proposal that based on the 2019 stack test, Rain had indicated that their pyroscrubber emission formula underestimates emissions. The 2019 stack test also showed that stack flow equations were overestimating and underestimating pyroscrubber stack flow. We also note that the additional stack tests in 2020 and 2021 coupled with pending potential AOC revisions proposed by Rain that EPA and LDEQ are preliminarily reviewing, while not the basis or rationale for our decision making, includes additional deviations indicating that Rain continued to have difficulty complying with the limits in the August 2, 2018 AOC after the attainment date had passed. The proposed revisions to the emissions formula for the pyroscrubber indicate that estimated emissions should have been higher than those calculated with the formula used for determining compliance since August 2, 2018. This indicates there may have been more times that pyroscrubber emissions did not comply with the AOC limits.[29] The stack tests indicate that pyroscrubber stack flows were being overestimated by the equations some of the time, which creates a concern that the attainment modeling is not conservative and underestimates actual maximum concentrations. Overestimation of pyroscrubber flow means actual conditions had lower stack velocities and less dispersion, resulting in actual concentrations higher than the maximum modeled values. Stack tests also indicate some periods when the stack parameter equation underestimates flow, and because the flow rate is used to identify the transition stage and applicable emission rate, this could result in a different transitional stage being identified with different emission limits than the actual transitional scenario the pyroscrubber stack is operating within. Misidentification of the operating stage and applicable limits could result in additional periods of noncompliance that were not identified and higher concentrations than were modeled for that stage. These issues highlight the implications of the underestimation of maximum concentrations created by the underestimation of pyroscrubber emissions and overestimation or underestimation of pyroscrubber stack parameter equations used in determining compliance during the period prior to October 4, 2018. Underestimating emissions and mischaracterizing the actual pyroscrubber stack flow would likely also result in more periods of non-compliance than was reported, further indicating that the limits in the attainment demonstration SIP had not been fully implemented by October 4, 2018.

Commenter asserted that an exceedance of stack parameter limits or emission limits does not automatically lead to exceedances or design values above the SO_2 NAAQS and actual emissions and stack parameters of non-compliance periods should be modeled explicitly to determine if the specific non-compliance periods would result in exceedances or design values above the SO_2 NAAQS in determining if the area failed to attain. As discussed earlier in this action and in previous actions, the modeling was very sensitive to the combination of stack air flow, temperature and emission rates, and required 11 different operational scenarios to be able to model the full range of operations of the Rain facility. The stack parameter ranges for each operational scenario were developed based on stack test data and exploratory modeling and where it showed potential modeled violations, emission limits were further reduced. The 11 operating scenarios were developed and refined with several iterations leading up to the August 2, 2018 AOC because initial modeling of worst case emissions and stack parameters for all flow ranges of the pyroscrubber and/or waste heat boiler stack resulted in modeled violations. The 11 operating scenarios were developed to try and give operational flexibility to Rain and still have modeling that demonstrated attainment. The facility has struggled to comply with these 11 operational scenarios and identified 7 days in the period of August 2, 2018, through

[27] See the 2019 Stack Test Report, available in the docket for this action.

[28] See Table 5 of the 2019 Stack Test Report, available in the docket for this action.

[29] Email (with attachments) from LDEQ to EPA on December 8, 2021, that provided updated analysis of pyroscrubber emission formula compared with stack test data, proposed new emission and stack parameter limits or to be included in a future AOC revision, and updated modeling, available in the docket for this action.

October 4, 2018, where the facility was not in compliance with the August 2, 2018 AOC limits.[30] As indicated in the proposal, part of a determination of whether the area has reached attainment is whether there are limits (emission limits and stack parameter limits) in place that have been fully implemented that demonstrate modeled attainment. In this case there was an AOC in place for this roughly 2-month period, but the limits were not being complied with to indicate that the control strategy in the SIP had been fully implemented and, therefore, that the area reached attainment. In addition to the identified periods of non-compliance in the 2018 report, we also identified that the pyroscrubber emissions were underestimated, and pyroscrubber stack flows were over- and under-estimated, which could lead to mis-identifying the appropriate transition stage and emission limits, and these factors indicate that additional periods of non-compliance were possible during that 2-month period than what was reported. As discussed elsewhere in our responses, Rain has continued to have more than a dozen days per year (2019 and 2020) that they identified that did not comply with the August 2, 2018 AOC limits, and Rain has requested to revise the emission formula for the hot stack and also change the equation for determining stack parameters and emission limits for the operational scenarios and further revise the limits in the August 2, 2018 AOC. This information continues to support our position that the August 2, 2018 AOC limits were not fully implemented and complied with prior to the October 4, 2018 attainment date and periods of non-compliance have continued to occur.

EPA disagrees that modeling of the 7 days (when Rain did not comply with the August 2, 2018 AOC limits) is appropriate or possible based on several factors. Given the observed sensitivities of the modeling, it is likely that modeling actual emissions or parameters would result in modeled exceedances. The exact stack parameters and emission rates for the Rain sources are not available to be modeled. Nor are exact emission rates for many sources at Chalmette and Valero refineries. As discussed elsewhere in responses, Rain is requesting changes to the AOC including changes to the formula for calculating emissions from the pyroscrubber stack that would result in higher emissions being calculated and also potentially changing how pyroscrubber flow rates and temperatures are derived, and the combination of these proposed changes could increase estimated emissions from the pyroscrubber when in transitional stages by 27%. These changes indicate that pyroscrubber emissions were underestimated in the past due to the emission equation and due to underestimated pyroscrubber stack flow, including during the period from August 2, 2018, through October 4, 2018, and as a result periods of non-compliance may have been underestimated. The revised emission formula is under review by LDEQ[31] and the formula could change further, so there is not an accurate way to estimate pyroscrubber emissions for the 7 days of non-compliance periods (from August 2, 2018, through October 4, 2018). Similarly, there is uncertainty in the estimated pyroscrubber flowrates with a potential to overestimate and underestimate the actual flowrates which also results in changes to how much the pyroscrubber stack is emitting. A revised estimation methodology for pyroscrubber stack parameters is also currently under review by LDEQ[32] as part of the proposed AOC revisions. With uncertainty about what the actual emissions were during these non-compliance periods and uncertainty as to actual stack parameters, it is not feasible to try and model the periods of non-compliance. Moreover, since emissions were being underestimated some of the time with the pyroscrubber formula, and the pyroscrubber flowrates were overestimated/underestimated, there could also be more periods that the facility was not in compliance in the period from August 2, 2018, through October 4, 2018.

5. Overall Assessment

Comment: EPA received a number of comments opposed to EPA's proposed determination that the St. Bernard area failed to attain the one-hour SO_2 NAAQS by the applicable attainment date. Commenters indicated that EPA should find that St. Bernard Parish did attain based on all the available information. Some of these commenters listed their assessment of several categories of factors that they indicated when taking all of them into account provided overall support that they thought that the area had reached attainment by the October 2018 attainment date and EPA should weigh all these categories of factors and conclude the area did reach attainment. We have described these factors in more detail elsewhere and provide an additional summary here. These factor categories that the commenters raised include (1) the large reductions in emissions at Rain and reductions in emissions at other nearby sources, (2) the two monitors in the area both have monitoring levels below the NAAQS level, (3) the AERMOD modeling that was included in the SIP demonstration was conservative for several reasons and demonstrated attainment, (4) the facility has achieved a high level of compliance with the limits in the attainment demonstration SIP with only a small amount of hours not in compliance, and (5) EPA should consider compliance information since October 4, 2018 and also proposed revisions to the AOC and revised modeling. See the comments in subsections II.A.1 through II.A.4 for a summary of the major subjects that commenters are asking EPA to weigh in making EPA's determination of whether or not the area attained by the attainment date. Overall, several commenters indicated that these factors should be considered in an overall weight-of-evidence that supports their comments that EPA should determine the area did attain.

In addition, commenters alleged that in EPA's proposed determination, EPA rejected or ignored actual data from the monitors in St. Bernard Parish when it factored in modeling and compliance data. Commenters argued that EPA's position in its proposed determination is based on ''conjecture'' and not rationally connected to any evidence. Commenters also stated that while EPA cited potential issues with Rain's compliance with the values used in the modeling, it did not attempt to quantify those impacts, nor correlate any issues of compliance problems with any actual impact at the ambient monitoring locations. Commenters continued that EPA's failure to do so results in an arbitrary, unsupported determination that the air quality in the parish did not meet the 1-hour SO_2 NAAQS.

Response: We disagree with the commenters statements that EPA did not consider and weigh all the available information in an appropriate weight-of-evidence approach when making our determination for the area. In our proposal, we proposed to find that the St. Bernard area did not attain the 2010 one-hour SO_2 NAAQS by the October 4, 2018 attainment date. That proposal and our final action are based on our review and weighing of all of the relevant, available information, including

[30] See deviations listed in semiannual monitoring reports for 2018.

[31] EPA is so far only doing preliminary, early engagement support here per the state's request, as any revised AOC is not officially before EPA for review.

[32] *Id.*

monitoring, emissions, modeling, stack testing information, and compliance data in determining if the area attained or failed to attain by the October 4, 2018 attainment date.

As discussed in more detail in preceding responses (Responses in sections II.A.1 through II.A.4), EPA has evaluated comments and available information and assessed if overall each comment group provides relevant information that the area attained or did not attain the 1-hour SO_2 NAAQS by October 4, 2018.

Comments summarized in subsection II.A.1 relate to decreases in emissions and modeled emissions in St. Bernard from Rain and other SO_2 sources. See our responses to the comments and information in subsection II.A.1. Overall EPA found the comments did not provide sufficient information that clearly shows the area attained by October 4, 2018, only that emissions have decreased. As explained in subsection II.A.1, LDEQ's modeling accounted for all emission reductions at the time the modeling was performed in 2018 by incorporating the most recent short term allowable emissions for the modeled sources in St. Bernard Parish.

Comments summarized in subsection II.A.2 relate to decreases in monitored values, recent monitored values that are not violating the standard, and location of modeled maximum values versus values at the monitor locations. See our responses to the comments and information in subsection II.A.2. Overall, EPA found the comments did not provide sufficient information that clearly shows the entire area attained or did not attain by October 4, 2018, and we conclude commenters did not provide any substantial evidence that the area did or did not attain, simply that monitoring levels have dropped. We provide additional explanation in subsection II.A.2 that the monitors are not located such that they are representative of the maximum SO_2 concentrations in the area and thus do not provide sufficient evidence that the area has attained.

Comments summarized in subsection II.A.3 relate to whether the modeling as conducted is overly conservative and overestimates concentrations. See our responses to the comments and information in subsection II.A.3. Overall, EPA found the comments did not provide sufficient, additional information that clearly shows the area attained and instead, some of the information provides evidence that non-compliance periods may have been more numerous than reported, thus having a higher potential for exceedances in the period of August 2, 2018 through October 4, 2018. Such information substantiates our findings that the area did not attain by October 4, 2018. We conclude that consideration of the comments and additional information presents therein did not provide sufficient evidence that the area attained by October 4, 2018, but in contrast provides further evidence that due to identified periods of non-compliance coupled with likely additional non-compliance periods that were not identified due to underestimation of emissions and/or uncertainty in estimated flow rates, the necessary emission limitations and stack parameters in the AOC were not fully implemented. Because the emissions and stack parameters at times fall outside the limits and conditions modeled in the approved attainment demonstration, the LDEQ's attainment modeling, contrary to the commenter's assertions, is not conservative all the time. Moreover, the non-compliance periods may have resulted in exceedances and potentially violations of the one-hour SO_2 NAAQS in areas other than the monitored location and thus, EPA cannot find that the area attained.

Comments summarized in subsection II.A.4 relate to facility compliance including periods of non-compliance from August 2, 2018 through October 4, 2018 and from October 5, 2018 through June 30, 2021, and whether periods of non-compliance could result in exceedances/violations. See our responses to the comments and information in subsection II.A.4. Overall, EPA found the comments did not provide additional information that clearly shows the area attained by the attainment date, in contrast the information further corroborated that the pyroscrubber emissions were underestimated and calculations for stack parameters were also inaccurate and would result in further underestimating emissions for the period August 2, 2018, through October 4, 2018, thus providing evidence that Rain may have been not in compliance for periods in addition to those identified for the 2-month period in 2018. The additional compliance records, stack test reports, and the information provided in association with the proposed AOC changes provide further weight of evidence that the Rain facility has not been able to comply with emission limits and stack parameters in the August 2, 2018 AOC and that Rain needs new emission limits, new pyroscrubber emission equation, new formulas for calculating stack flows, and new modeling. Overall, we conclude that consideration of the comments and additional information provided therein did not provide any substantial weight of evidence that the area did attain by October 4, 2018, but does provide further evidence that the limits in the attainment demonstration SIP had not been fully implemented and that periods of non-compliance have occurred prior to the attainment date and continued to occur in St. Bernard Parish. Based on this additional information, it is evident that the facility was not in compliance with AOC limits during the period August 2, 2018, through October 4, 2018.

We disagree with the commenters' statements that we rejected or ignored data from the monitors in St. Bernard Parish in our proposed determination. We also disagree that our proposed determination was based on conjecture and not rationally connected to any evidence. As EPA stated in its responses stated earlier in this document, EPA acknowledges that the area's air quality has improved due to emissions reductions in the area, and that the monitors reflect this improvement (see sections II.A.1 and II.A.2). EPA considered the data from the Chalmette Vista and Meraux monitors along with all other relevant information in its determination. We discussed the degree of potential impacts from Rain's noncompliance and how that could affect the design values and attainment in the St. Bernard area as well as its impact to the attainment demonstration modeling (see sections II.A.3 and II.A.4). In addition, we explain that with uncertainty about what the actual emissions and stack flowrates were during these non-compliance periods, it is not feasible to try to model the periods of non-compliance. We continue to affirm that (1) the Rain facility's control measures had not been fully implemented by the attainment date, (2) because the limits and stack parameters upon which the attainment modeling relied on have not been met, the attainment modeling with evident compliance issues tied to it, cannot be supportive of a finding of attainment, and (3) monitoring data alone is insufficient to determine the area's attainment. Therefore, contrary to the commenters' assertion, to determine the area had attained in the face of evidence that the requirements of the attainment demonstration SIP had not been met, would have required conjecture. EPA cannot determine with certainty that the area attained the NAAQS. This forms our basis for determination that the St. Bernard area failed to attain the SO_2

NAAQS by the October 4, 2018 attainment date.

In summary, we did weigh all relevant, available information initially in our proposal to find the area did not attain by October 4, 2018. We have reviewed all comments and information provided therein and determined that this information provided further corroborative evidence that Rain was not able to comply with AOC limits on multiple occasions during the roughly 2-month period up through October 4, 2018. The EPA also notes that the company is working with LDEQ to develop new emission limits, a revised emission formula for pyroscrubber emissions, new formula for calculating air flows through the stacks, revised stack parameter limits for some of the operating scenarios, and revised modeling. However, any such revised AOC is not officially before us for review or action. Again, the combination of the changes to these above-referenced items and revisions to the AOC is evidence that Rain cannot comply with the existing AOC and that the EPA approved SIP for St. Bernard Parish has not been fully implemented. Under CAA section 179(d)(2), if the EPA determines that an area did not attain the NAAQS by the applicable deadline, LDEQ has up to 12 months from the date of the determination to submit a revised SIP for the area demonstrating attainment. The revised SIP will need to address the current air quality and SO_2 emissions in St. Bernard and include new modeling and a new attainment demonstration package.

B. Comments on Redesignation of the St. Bernard Area

Comment: Commenters disagreed with EPA's proposed determination that the St. Bernard area failed to attain the SO_2 NAAQS and requested EPA redesignate the area to unclassifiable or attainment using the available information, including monitoring data and modeling results.

Response: EPA would like to clarify that in this action, EPA is only making a determination that the St. Bernard area failed to attain the SO_2 NAAQS by the area's attainment date of October 4, 2018. The EPA designated St. Bernard Parish nonattainment for the 2010 one-hour SO_2 NAAQS on August 5, 2013, which became effective on October 4, 2013; St. Bernard Parish has remained designated nonattainment since its initial designation and that designation status will not be affected by this action.

EPA notes that the CAA section 107(d)(3)(F) explicitly prohibits redesignating areas from nonattainment to unclassifiable. Furthermore, this action is not an action that redesignates the St. Bernard area from nonattainment to attainment in accordance with the requirements prescribed in CAA section 107(d)(3)(E). We also note that in a May 29, 2019 final action, we approved the St. Bernard area's SO_2 nonattainment SIP planning requirements, including the attainment demonstration (84 FR 24712); however, that action also did not change the nonattainment designation of St. Bernard Parish.

Once an area is designated as ''nonattainment'' for a standard, that area retains that nonattainment designation until it meets the CAA's redesignation requirements. For an area to be redesignated to attainment, in addition to a determination that the area attained the 2010 SO_2 NAAQS, the air agency must also submit, and receive full approval of a request that satisfies all of the criteria for redesignation to attainment, including:

(1) obtain a determination that the area has attained the NAAQS;

(2) have a fully approved attainment SIP that meets all of the applicable requirements;

(3) demonstrate that the improvement in the area's air quality is due to permanent and enforceable reductions;

(4) have a fully approved maintenance plan that provides for continued attainment; and

(5) satisfy all of the applicable requirements in CAA section 110 and CAA Subpart D.

However, the EPA again emphasizes that this action is limited to the EPA's determination that the St. Bernard Parish Area has failed to attain the 2010 SO_2 NAAQS. Any redesignation request would have to be developed and submitted by the state to EPA and would be subject to a separate agency action with opportunity for public participation.

C. Comments on Air Quality Concerns

Comment: EPA received a number of comments from community members and community groups raising general environmental and air quality concerns within and around the St. Bernard area. Commenters stated their concerns over air pollution from various sources and how that pollution would affect or has affected their health. Commenters expressed air quality concerns due to improper enforcement historically. Some commenters additionally raised environmental justice concerns due to the proximity of the industrial facilities and the effect of their emissions on surrounding communities. Commenters requested that EPA examine the air quality and emissions in the area and work with LDEQ to ensure all SIP provisions are compliant with the CAA and that air quality standards and SIP requirements are implemented and enforced. Commenters also requested that EPA perform cumulative impact analyses and health risk assessments for the area.

Response: EPA appreciates these comments, which raise additional environmental and public health issues of concern in this region of Louisiana. We wish to first recognize the importance of the issues raised in comments and have provided responses to those where possible. However, many of these comments raised are not directly relevant to the basis for our final decision in this rulemaking, (in other words, the issues and points raised in the comments, which if adopted, would have required us to change our proposed determination of whether ambient SO_2 levels in the St. Bernard Parish area met the NAAQS by the attainment date.) It is important to note that only comments addressing whether SO_2 levels in the area met the SO_2 air quality standard can be considered as a part of our decision-making process for this final action.

As a general matter, we wish to recognize commenters' concerns that certain communities are disproportionately impacted by environmental harms and risks. Nationwide, EPA is working to address disproportionate impacts in many aspects of our programs to the greatest extent allowed by federal law. While we did not base our final finding of the failure to attain on specific environmental justice factors, we do wish to share for informational purposes only that this final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in St. Bernard Parish, Louisiana. CAA section 179(d) requires that the State must conduct additional air quality analysis and evaluation of further SO_2 reductions in the area to provide for attainment of the NAAQS and must submit to EPA a new SIP for this purpose within one year of the publication of this final action.

With regards to concerns about LDEQ's surveillance and enforcement program in the region, EPA is committed to our mission to protect human health and the environment by ensuring that federal laws protecting human health and the environment are administered and enforced fairly, effectively, and as Congress intended, including through EPA's oversight role

in the implementation of the CAA. EPA works closely with LDEQ to ensure that LDEQ is properly implementing its program. We accomplish this through close coordination on specific investigations and enforcement actions, monthly calls, and regular program reviews through the State Review Framework.[33] Additionally, EPA maintains authority to conduct inspections and initiate enforcement actions within the state of Louisiana. In April 2021, EPA's Office of Enforcement and Compliance Assurance issued a memo entitled, ''Strengthening Enforcement in Communities with Environmental Justice Concerns,'' which directs the EPA Regional Offices to increase our facility inspections in overburdened communities. Since the memo was issued, EPA Region 6 has increased our air inspections in Louisiana's overburdened communities and those areas with environmental justice concerns.

In addition, EPA announced several key actions on January 26, 2022, aimed at finding solutions to the environmental burdens that EPA Administrator Michael S. Regan encountered on his November 2021 Journey to Justice Tour through Mississippi, Louisiana, and Texas. The Tour spotlighted longstanding environmental justice concerns in historically marginalized communities and allowed Administrator Regan to hear firsthand from residents dealing with the impacts of pollution. Specifically, EPA committed to address environmental justice concerns by conducting a Multi-Scale Monitoring Project. This project includes unannounced inspections, sampling, and air monitoring in priority areas. More about the Multi-Scale Monitoring Project can be found at *https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey.*

Commenters requested that EPA should perform cumulative impact analyses and health risk assessments for the area and region. EPA is working to develop tools, metrics, and guidance to assess cumulative impacts and human health risk assessments and incorporate these into our programs. As provided in the EPA's *FY 2022–FY 2026 Strategic Plan,*[34] one of the Fiscal Year 2022–2023 Agency Priority Goals includes delivering ''tools and metrics for EPA and its Tribal, state, local, and community partners to advance environmental justice and external civil rights compliance.'' Specifically, by September 30, 2023, EPA will ''develop and implement a cumulative impacts framework, issue guidance on external civil rights compliance, establish a set of at least 10 indicators to assess EPA's performance in reducing disparities in environmental and public health conditions, and train staff and partners on how to use these resources.''

We encourage citizens and communities to continue to engage with EPA and LDEQ to raise specific concerns regarding permitting and enforcement actions within the Parish.

Comment: A number of commenters specifically mentioned the proposed mega international port, terminal, and container yard in Violet, St. Bernard Parish LA (Port of New Orleans's Louisiana International Terminal) and asked that this project not be built, citing concerns that it would deteriorate the air quality in St. Bernard Parish and cause harm to its residents.

Response: We note that this comment is outside the scope of this rulemaking and involves separate regulatory actions, but in an effort to aid and inform the public and identify opportunities for public comment on the proposed project, the following response is provided.

The Port of New Orleans (PONO) is seeking permits from the U.S. Army Corps of Engineers (USACE) to build its proposed terminal project in Violet, St. Bernard Parish, Louisiana. In response to PONO's permit application, USACE deemed the application complete and issued a public notice on January 24, 2022, and again on March 28, 2022, under USACE reference permit number MVN–2021–00270–EG requesting comments from interested parties on the application to consider and evaluate the impacts of the proposed activity. USACE is currently reviewing comments received during the public comment period to determine the next steps on the permits for the project, prepare an environmental analysis pursuant to the National Environmental Policy Act of 1969 (NEPA), and determine public interest in the project.

Under NEPA, USACE, as the lead federal agency, must study the potential impacts of the LIT project on the physical, cultural, human, and natural environments before permitting construction. The study must also identify actions to minimize negative impacts and evaluate alternatives to the proposed project that could serve the same purpose.

USACE will ask the public what potential impacts should be studied through a public process of scoping meetings and comment periods tentatively scheduled to begin in October 2022. The resulting NEPA environmental analysis prepared by USACE will be public noticed for review and comment by any interested parties. The EPA NEPA program plans to participate in the scoping and public comment phases of USACE's NEPA environmental analysis. The USACE public notices for the PONO's terminal project will be available at *https://www.mvn.usace.army.mil/Missions/Regulatory/Public-Notices/.*

Comment: The commenters stated that LDEQ should be required to submit a revised SIP to EPA, provide expeditious attainment of the SO_2 NAAQS, and provide for additional measures to protect public health. The commenters also stated that EPA should consider updated air dispersion modeling for all sources in the St. Bernard Parish.

Response: We appreciate and acknowledge the commenter's statements. In this action, EPA is finalizing our finding that the St. Bernard Parish SO_2 nonattainment area failed to attain the 2010 SO_2 standard by the attainment date of October 4, 2018. This action triggers under CAA section 179(d) a requirement from the State of Louisiana to submit, within one year of its publication, revisions to the Louisiana SIP that, among other elements, provide for expeditious attainment of the 2010 SO_2 standard. This revised SIP to meet nonattainment area requirements to provide for attainment is typically called an attainment demonstration SIP or attainment SIP or plan.

We agree with the commenters that it is important to consider all emission sources of SO_2 in developing a plan that is protective of the NAAQS and note that this type of analysis is a necessary component of the attainment SIP for the area. The required revised SO_2 attainment plan must address two main components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis which demonstrates that these emission limits and control measures provide for timely attainment of the NAAQS. The required modeling includes modeling the cumulative impact of all SO_2 emission sources in the area on ambient air quality and must demonstrate that the entire nonattainment area (all of St. Bernard Parish) will attain the standard with the implementation of the necessary emission limits. The modeling demonstration in the 2018

[33] See *https://www.epa.gov/compliance/state-review-framework.*

[34] See *https://www.epa.gov/planandbudget/strategicplan.*

attainment SIP analyzed emissions from the three major SO_2 sources in the parish (Valero Refining, Chalmette Refining, and Rain, which contributed 99% of the point source emissions in the area) using maximum allowable emissions and federally enforceable permit limits.[35] The revised SIP must include an updated modeling demonstration reflecting the current permitted and other federally enforceable allowable emissions for sources in the area. In addition, the attainment SIP requirements include a requirement for an emission inventory of current emissions for all sources of SO_2 in the nonattainment area. That information would enable the EPA to identify any new large sources of SO_2 when determining which sources should be modeled and addressed in a new attainment demonstration SIP.

D. Comments on State Programs

Comment: The commenter requested that EPA withdraw its approval of the State of Louisiana's authority to implement the CAA within St. Bernard Parish and that, instead, EPA Region 6 assume the authority and responsibility for designing, approving, implementing, and enforcing air quality implementation plans for St. Bernard Parish.

Response: We note that this comment is outside the scope of this rulemaking, but to better aid and inform the public, the following response is provided on the topic of state delegated authorities under the CAA.

States, local governments, territories, and tribes are not provided a blanket approval of authorities to implement the federal Clean Air Act within their respective jurisdictions. Air quality programs and plans are individually submitted to the EPA for review and approval, and if the programs and plans meet CAA requirements, then EPA is obligated to approve them. We note that the CAA requires EPA to approve any and all SIPs that satisfy the applicable CAA requirements. The CAA prescribes a regulatory scheme that envisions a collaborative process between the states and federal government. The EPA reviews and approves state-wide regulatory programs for each state, such as the new source review (NSR) and Title V permitting program, as well as NAAQS-specific infrastructure SIPs; EPA also reviews and approves area-specific plans within the state to implement and enforce control measures providing for attainment of the NAAQS. EPA's review of such programs and plans ensures that implementation mechanisms and enforcement authority are adequate to meet CAA requirements, but actual enforcement is generally undertaken by states with EPA and citizens also having enforcement authority.

Comment: Commenters made recommendations for LDEQ's permitting process. Commenters recommended that an oversight board be established for the LDEQ, that a conflict of interest policy be established for LDEQ staff members that issue permits, and that the LDEQ be required to establish a written policy that guides when public hearings are required. Commenter stated that EPA should consider delaying the issuance of all Title V permits until health risks and cumulative impacts are reviewed and improvements incorporated in Title V permits.

Response: We note that this comment is outside the scope of this rulemaking, but to better aid and inform the public, the following response is provided on the topic of state permitting programs.

EPA ensures that mechanisms are in place and that a state has adopted the appropriate statutory and regulatory authority. For example, the State has included the required opportunities for public participation (as approved in the State's Title V program), but more specific decisions such as written guidance dictating when public hearings are required is left to the State's expertise.

As required under Title V of the CAA, EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of a State operating permits program (57 FR 32250, July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA programs for issuing these operating permits to all major stationary sources and to certain other sources. EPA's Operating Permits Program review occurs pursuant to section 502 of the CAA and the part 70 regulations, which together outline criteria for approval and disapproval. Title V operating permits must address applicable federal CAA requirements, including requirements for public participation (see 40 CFR 70.7(h)). EPA promulgated final full approval of the State of Louisiana's Title V Operating Permits Program on September 12, 1995 (60 FR 47296).

On December 28, 2016, EPA approved revisions to the Louisiana SIP that addressed requirements in CAA section 128 regarding state board composition and conflict of interest and disclosure requirements (81 FR 95477). LDEQ is an executive agency that acts through its Secretary and approves all CAA permits and enforcement orders in Louisiana. LDEQ stated in its submittal that for public disclosure of any potential conflict in the SIP, as required by CAA section 128, that if a person derives anything of economic value that such person should be aware, he/she must disclose specified elements under the Louisiana Revised Statutes (LA RS) Title 42; Chapter 15: Code of Governmental Ethics; Section 1114(A)(1)–(4) and (C) ''Financial disclosure.'' These relevant revised statutes approved into the SIP demonstrates that Louisiana complies with the requirements of CAA section 128.

Comment: Commenters stated that LDEQ's permitting program prioritizes facility permit approvals without consideration of public comments and limits public participation. Commenters cited the approval of the PBF Chalmette Refinery, LLC's application for a Part 70 permit to construct and operate a Renewable Diesel Unit and the associated variance application as a recent example of the commenters' claimed permitting program inadequacies. Commenters recommended auditing LDEQ's public participation process for its permitting program by identifying projects that have received more than a specified number of comments, and if any resulted in a change of the project description.

Response: We note that this comment is outside the scope of this rulemaking, but to better aid and inform the public, the following response is provided.

EPA notes that in the LDEQ's permit application process for the Chalmette Renewable Diesel Unit issued on December 21, 2021, LDEQ found that the application satisfied the permit application requirements. As provided earlier in this notice, LDEQ's permitting program satisfies the CAA requirements and has received EPA's approval. We additionally note that LDEQ stated in its final approval that it amended the permit as a result of public comments. As a result of the public participation process that citizens engaged in with the LDEQ, the permit was amended as follows: N-hexane emissions from the hotwells were required to be controlled to 98 percent rather than 95 percent and limited to 17.90 tons per year (tpy); Particulate Matter emissions from the cooling tower are now controlled to

[35] See Section IV.C. of the April 19, 2018 proposal, ''Approval and Promulgation of Implementation Plans; Louisiana; Attainment Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area'' (83 FR 17349).

0.005 percent rather than 0.02 percent with resulting annual emissions limits of 4.47 tpy $PM_{2.5}$ and 4.05 tpy PM_{10}. In addition, the control efficiency on the vacuum systems and dust collectors which control emissions from bleached earth loading and filter aid loading will be increased from 95 to 99 percent. The process heaters will be fired exclusively with natural gas rather than refinery gas, resulting in lower SO_2 emissions due to the lower sulfur content of the fuel. Heater 23a will be fitted with low nitrous oxide (NO_X) burners and constrain its firing rate to 55 MMBTU/hr, thus reducing NO_X emissions and all other products of incomplete combustion. Taken together, these permit changes will result in lower emissions.

EPA also notes that it is within LDEQ's authority to issue variances. The Louisiana regulations generally prohibit commencement of construction unless a permit is issued, and fees paid (LAC 33:III.501(C)(2) and (3)). However, the variance provisions, approved as part of Louisiana's Title V Operating Permits Program on September 12, 1995 (60 FR 47296) and incorporated at LAC 33:III.525, provide that minor permit modifications or variances under a Title V permit program are not required to undergo public participation requirements (*see* 40 CFR 70.7(e)(2) and (3), and 40 CFR 70.4(d)(3)(iv)).

EPA notes that for the permit application process for the Chalmette Renewable Diesel Unit issued on December 21, 2021, LDEQ responded to over 100 distinct comments, and as a result of citizen engagement in the public participation process, the permit was amended, and the resulting changes are anticipated to lower emissions at the site as described earlier in this notice.

In general, a Title V petition allows anyone to raise concerns to EPA and to ask the Agency to object to the issuance of a new, modified, or renewed operating permit for a specific facility if the concerns with the permit were raised to the permitting authority during the notice and comment period for the permit action. If a member of the public believes that a Title V permit issued by a state, local, or tribal permitting authority does not comply with the CAA or the EPA's Title V permit implementing regulations (40 CFR part 70), they may petition EPA to object to the permit pursuant to certain Title V petition requirements. If EPA grants a petition and objects to the issuance of a permit, the permitting authority must correct or rectify issues with the permit. EPA has 45 days to review a Title V permit proposed by a permitting authority. If the Administrator does not object to a permit during that time, the public has 60 days to petition the Administrator to object to the permit.

For more information on the Title V program, opportunity to petition a state-issued Title V permit, and EPA's authority and oversight role on a state's EPA-approved Title V permit program, visit *https://www.epa.gov/title-v-operating-permits*.

Comment: Commenters requested EPA to allow the use of low-cost, reliable sensors as part of the Louisiana Annual Monitoring Network Plan and install additional monitors in the area in order to better inform the public about the air quality in the area and to protect the health and well-being of those impacted by pollution. Commenters stated that the current State of Louisiana monitoring network is inadequate.

Response: We note that this comment is outside the scope of this rulemaking, but to better aid and inform the public, the following response is provided.

EPA acknowledges that an increasing number of low-cost air quality sensors are now available on the commercial market, but the amount of research-based evaluation of these sensors remains very limited. EPA is engaged in the discovery, evaluation, and application of these emerging technologies and is sharing information gained with its partners and stakeholders. EPA scientists are involved in the evaluation of some air sensors for use by the public and provide the information in reports, but do not make any endorsements or recommendations for their use. Data from new air sensor instruments (such as low-cost air quality sensors) should not be used in a regulatory context at this time unless those instruments meet all applicable regulatory requirements.[36]

In order to systematically characterize air sensor measurements, EPA is supporting research on sensor performance including the development of non-regulatory performance targets and testing protocols for supplemental and informational monitoring applications that complement—but do not replace—existing regulatory programs and requirements. These efforts are intended to provide regulators, outside parties, and the public alike with streamlined, unbiased assessments of sensor performance in the near-term and into the future.

For more information on EPA's position on the use of air sensor data for NAAQS compliance and the steps the Agency is taking to better understand the data quality, interpretation, and management of sensor data in the ambient environment, see the June 2020 EPA memorandum from the EPA Office of Air and Radiation.[37]

Regarding the adequacy of Louisiana's monitoring network, the monitoring network outlined in a state's Annual Air Monitoring Network Plan (AAMNP) must meet federal statutory and regulatory requirements, including technical requirements for siting. Ambient SO_2 monitoring data are collected by state, local, and tribal monitoring agencies in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58. A monitoring network is generally designed to measure, report, and provide related information on air quality data as described in 40 CFR part 58. To ensure that the data from the network are accurate and reliable, the monitors in the network must meet a number of requirements including the use of monitoring methods that EPA has approved as Federal Reference Methods (FRM) or Federal Equivalent Methods (FEM). The FRM/FEM instruments must meet rigorous standards for accuracy and reliability (see 40 CFR part 53 for details).

Louisiana's Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005). EPA also approved into the Louisiana SIP provisions that require air quality monitoring be conducted consistent with EPA guidelines (54 FR 9783, March 8, 1989). In July 2021, LDEQ submitted its 2021 AAMNP that included the plan for the SO_2 NAAQS; EPA approved the LDEQ's 2021 AAMNP in October 2021.

The LDEQ's AAMNP goes through public notice and comment each year. Information on LDEQ public notices is provided at *https://deq.louisiana.gov/public-notices*. The 2022 LDEQ AAMNP comment period was open from April 22, 2022, to May 26, 2022. The EPA notes that in LDEQ's response to one of the comments received regarding front-line communities and environmental justice concerns, LDEQ stated the following: ''To help foster relationships with under-served communities, LDEQ has been placing the Temporary Located Community (TLC) Air Monitoring Program air monitors in ''front-line community'' neighborhoods to collect ambient air quality data. This real-time data is relayed to LDEQ's website . . . LDEQ has plans to place a TLC Air Monitor in the Lower Ninth Ward in New Orleans later this year. For more information, see the Environmental Justice Consideration section of the

[36] EPA Memorandum, ''Air Sensors,'' from Anne L. Idsal, Office of Air and Radiation. June 22, 2020.

[37] *Id.*

2022 Louisiana Annual Air Monitoring Network Plan.'' EPA acknowledges and encourages the use of the TLC program as part of LDEQ's efforts to address EJ concerns in the States' communities.

E. Other Comments on the NAAQS and Designations

Comment: Commenters recommended the EPA consider using the World Health Organization's updated standard of 40 μg/m^3 24-hour mean, stating that a greater degree of protection than the EPA's 2010 SO_2 standard of 75 ppb is needed.

Response: We note that this comment is outside the scope of this rulemaking, but to better aid and inform the public, the following response is provided.

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS for each criteria air pollutant to provide protection for the nation's public health and the environment. The CAA requires periodic review of the science upon which the standards are based and the standards themselves. Reviewing the NAAQS is a lengthy undertaking and includes the following major phases: (1) planning, (2) integrated science assessment (ISA), (3) risk/exposure assessment (REA), (4) policy assessment (PA), and (5) rulemaking. More information on the NAAQS review process can be found at this link: *https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards*.

Additionally, the 75 ppb standard for the primary one-hour SO_2 NAAQS is based on the 99th percentile of daily maximum one hour average concentrations, averaged over 3 years, and is calculated differently from a 24-hour mean. See 40 CFR 50.17. The 75 ppb standard is not calculated by averaging the daily concentration of SO_2, it is calculated by determining the highest concentration within a one-hour period in a given day and is aimed towards preventing acute short-term exposure to SO_2 in order to better protect public health. As provided in the final rule promulgating the 2010 SO_2 NAAQS, the rationale for the establishment of the 75 ppb standard focused primarily on respiratory morbidity following short-term (5-minutes to 24-hours) exposure to SO_2, for which the ISA (Integrated Science Assessment for Oxides of Sulfur-Health Criteria) found a causal relationship.[38] The maximum daily one-hour SO_2 values from four days each year from 3 consecutive years determines whether the area will attain; as a result, a very small number of monitored exceedances can result in a violation.

III. Final Action

Under CAA section 179(c)(1)–(2), the EPA is making a determination that the St. Bernard Parish SO_2 nonattainment area has failed to attain the 2010 one-hour SO_2 NAAQS of 75 ppb by the applicable attainment date of October 4, 2018. This determination is based upon consideration of and review of all available information for the St. Bernard area leading up to the area's attainment date of October 4, 2018, including (1) emissions and monitoring data, (2) the state's air quality modeling demonstration, which showed the emission limits and stack parameters required at Rain, the primary source of SO_2 emission in the area, compliance with which were necessary to provide for the area's attainment, and (3) Rain's available compliance records between the period when the AOC limits became effective (August 2, 2018) and the area's attainment date. After publication of this final rule, the State of Louisiana is required under CAA section 179(d) to submit revisions to the SIP for the St. Bernard area. The required SIP revision for the area must, among other elements, demonstrate expeditious attainment of the SO_2 standard within the time period prescribed by CAA section 179(d) and such additional measures as the Administrator may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. The SIP revisions required under CAA section 179(d) would be due for submittal to the EPA no later than one year after the publication date of this final action. At this time, we are not prescribing additional measures for the SO_2 SIP revisions under CAA section 179(d)(2). This final action also triggers the implementation of contingency measures adopted in this area under CAA section 172(c)(9).

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''[39] EPA is providing additional analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our final action.

EPA conducted a screening analysis using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[40] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[41] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[42] To help mitigate this uncertainty, we have summarized EJSCREEN data within St. Bernard Parish, which covers multiple block groups and represents the average resident within the Parish. We present EJSCREEN environmental indicators to

[38] See Section II of the final rule ''Primary National Ambient Air Quality Standard for Sulfur Dioxide'', for more details (June 22, 2010, 75 FR 35519).

[39] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice*.

[40] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen*.

[41] See *https://www.census.gov/programs-surveys/geography/about/glossary.html*.

[42] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf*.

help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[43] EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education. The EPA prepared an EJSCREEN report covering the St. Bernard Parish SO_2 nonattainment area, which covers the entire Parish. Table 1 presents a summary of results from the EPA's screening-level analysis for the St. Bernard area compared to the U.S. as a whole (the detailed EJSCREEN reports are provided in the docket for this rulemaking).

TABLE 1—ST. BERNARD PARISH EJSCREEN ANALYSIS SUMMARY

Variables	St. Bernard Parish	U.S.
Pollution Burden Indicators:		
Particulate matter ($PM_{2.5}$), annual average	8.35 μg/m³ (43rd %ile)	8.74 μg/m³ (—)
Ozone, summer seasonal average of daily 8-hour max	38.6 ppb (24th %ile)	42.6 ppb (—)
Traffic proximity and volume score *	400 (63rd %ile)	710 (—)
Lead paint (percentage pre-1960 housing)	0.16% (48th %ile)	0.28% (—)
Superfund proximity score *	0.1 (66th %ile)	0.13 (—)
RMP proximity score *	2.5 (93rd %ile)	0.75 (—)
Hazardous waste proximity score *	2.6 (76th %ile)	2.2 (—)
Demographic Indicators:		
People of color population	38% (55th %ile)	40% (—)
Low-income population	45% (75th %ile)	31% (—)
Linguistically isolated population	2% (53rd %ile)	5% (—)
Population with less than high school education	20% (79th %ile)	12% (—)
Population under 5 years of age	7% (67th %ile)	6% (—)
Population over 64 years of age	11% (34th %ile)	16% (—)

* The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

This final rule formalizes EPA's determination that the St. Bernard Parish SO_2 nonattainment area has failed to attain the 2010 one-hour SO_2 standard of 75 ppb by the applicable attainment date of October 4, 2018, in accordance with section 179(c)(1)–(2) of the CAA. This action provides notice to the public that the area has failed to attain the NAAQS and informs the State of Louisiana of CAA requirements the State needs to meet so that air quality in the area will undergo further improvements. After publishing this final rule, the State of Louisiana is required under CAA section 179(d) to submit revisions to the SIP for the St. Bernard area within one year. The required SIP revision for the area must, among other elements, demonstrate expeditious attainment of the SO_2 standard within the time period prescribed by CAA section 179(d) and such additional measures as the Administrator may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. At this time, we are not prescribing additional measures for the SO_2 SIP revisions under CAA section 179(d)(2). This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in Louisiana.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action, if finalized, would require the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that the St. Bernard Parish SO_2 nonattainment area failed to attain the SO_2 NAAQS by the applicable attainment dates. If finalized, this determination would trigger existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not

[43] For additional information on environmental indicators and proximity scores in EJSCREEN, see ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 and Appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

impose any federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The proposed finding of failure to attain the SO_2 NAAQS does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the St. Bernard Parish SO_2 nonattainment area. Thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA.

K. The Congressional Review Act

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

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Pollution, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 26, 2022.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. Subpart T is amended by adding § 52.978 to read as follows:

§ 52.978 Control strategy and regulations: Sulfur dioxide.

(a) *Determination of failure to attain.* Effective November 4, 2022, the EPA has determined that the St. Bernard Parish nonattainment area failed to attain the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standards (NAAQS) by the applicable attainment date of October 4, 2018. This determination triggers the requirements of CAA section 179(d) for the State of Louisiana to submit a revision to the Louisiana SIP for the St. Bernard Parish nonattainment area to the EPA by October 5, 2023. The SIP revision must, among other elements, provide for attainment of the 1-hour primary SO_2 NAAQS in the St. Bernard Parish SO_2 nonattainment area as expeditiously as practicable but no later than October 5, 2027.

(b) [Reserved]

[FR Doc. 2022–21249 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0688; FRL–9955–02–R6]

Air Plan Approval; Louisiana; Repeal of Excess Emissions Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), on November 20, 2016. The submittal is in response to the EPA's national SIP call on June 12, 2015, concerning excess emissions during periods of Startup, Shutdown, and Malfunction (SSM). EPA is approving the SIP submittal and finds that the SIP

revision corrects certain deficiencies identified in the June 12, 2015, SIP call.

DATES: This rule is effective on November 4, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0688. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO_2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, *Shar.alan@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our July 22, 2022 (87 FR 43760) proposal. In that document, we proposed to approve the removal of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC 33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) from the Louisiana SIP. We also proposed to determine that such SIP revision corrects substantial inadequacies identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination ended on August 22, 2022, and no adverse comments were received. We received a comment letter supporting the action and urging EPA to take action on a separate SIP submittal concerning LAC 33:III.2201(C)(8) of the Louisiana SIP.

We acknowledge the support for our proposal and note that while LAC 33:III.2201(C)(8) of the Louisiana SIP was not the subject of our July 22, 2022 (87 FR 43760) proposal, the EPA intends to fulfill its obligations under the terms of a consent decree for taking action on the Louisiana SIP submittal concerning LAC 33:III.2201(C)(8).[1]

We also received numerous comment letters from the public as part of an effort organized by the Sierra Club that urged EPA to take action to close SSM ''loopholes.'' The commenters state that these SSM loopholes allow large amounts of pollution and that elimination of the loopholes will largely benefit Black, Latino, and Indigenous communities. These comments addressed SSM in general and did not include any specific comments on this rulemaking, which is focused on EPA's approval of the State's request to remove certain exemptions from the Louisiana SIP. With the removal of these provisions, sources in the State will no longer be able to use the repealed exemptions and will have greater incentives to control their air emissions.

EPA recognizes that certain communities are disproportionately impacted by environmental harms and risks. EPA is working to address disproportionate impacts in our programs to the greatest extent allowed by federal law. EPA is committed to our mission to protect human health and the environment by ensuring that federal laws protecting human health and the environment are administered and enforced fairly, effectively, and as Congress intended, including through EPA's oversight role in the implementation of the CAA. For example, the EPA has committed to address environmental justice concerns by conducting a Multi-Scale Monitoring Project. This project includes unannounced inspections, sampling, and air monitoring in priority areas. More about the Multi-Scale Monitoring Project can be found at *https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey.*

As no specific concerns were raised in public comment regarding this rulemaking action, we are finalizing our action as proposed.

III. Final Action

The EPA is approving a revision to the Louisiana SIP submitted by LDEQ on November 22, 2016, in response to EPA's national SIP call of June 12, 2015 concerning excess emissions during periods of SSM. More specifically, we are approving the removal of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC 33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) from the Louisiana SIP. We are approving these revisions in accordance with section 110 of the Act. The EPA is also determining that this SIP revision corrects deficiencies identified in the June 12, 2015 SIP call related to the above-referenced provisions.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''[2]

EPA provided additional analysis of environmental justice associated with this action for the purpose of providing information to the public in our July 22, 2022 (87 FR 43760) proposal. As discussed in the proposed action, we believe that this proposed action will be beneficial to all population groups within Louisiana and may reduce impacts. Exemptions for excess emissions during periods of SSM undermine the ability of the SIP to attain and maintain the NAAQS, to protect Prevention of Significant Deterioration increments, to improve visibility and to meet other CAA requirements. Such exemption provisions have the potential to lessen the incentive for development of control strategies that are effective at reducing emissions during certain modes of sources' operations such as startups and shutdowns or to take prompt steps to rectify malfunctions. Removal of these exemption provisions from the Louisiana SIP will bring the treatment of excess emissions in the SIP into line

[1] See Consent Decree resolving *Sierra Club et al.* v. *Regan* (Case No. 4:21–CV–6956–SBA, N.D. Calif.).

[2] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

with CAA requirements; thus, sources in the State will no longer be able to use the repealed exemptions and will have greater incentives to control their air emissions. We therefore determine that this rule will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of LAC 33:III.1107(A), LAC 33:III.1507(A), LAC 33:III.1507(B), LAC 33:III.2153(B)(1)(i), LAC 33:III.2307(C)(1)(a), and LAC 33:III.2307(C)(2)(a) in 40 CFR 52.970, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and the incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

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

Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 26, 2022.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. Amend § 52.970 in the table in paragraph (c) titled ''EPA Approved Louisiana Regulations in the Louisiana SIP'' as follows:

■ a. Under ''Chapter 11—Control of Emissions From Smoke,'' remove the entry for ''Section 1107.A Exemptions'';

■ b. Under ''Chapter 15—Emission Standards for Sulfur Dioxide,'' remove the entry for ''Section 1507 Exceptions, Startup provisions, Online Operating Adjustments, and Bubble Concept'';

■ c. Under ''Chapter 21—Control of Emissions of Organic Compounds,'' under ''Subchapter M. Limiting Volatile Organic Compound Emissions from Industrial Wastewater,'' revise the entry for ''Section 2153.B., 2153.B.1.d. –d.ii., 2153.B.3.–4.b Control Requirements'';

■ d. Under ''Chapter 23—Control of Emissions from Specific Industries,'' remove the entry for ''Subchapter D. Emission Standards for the Nitric Acid Industry.''

The revision reads as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
*	*	*	*	*
Chapter 21—Control of Emissions of Organic Compounds				
*	*	*	*	*
Subchapter M. Limiting Volatile Organic Compound Emissions from Industrial Wastewater				
*	*	*	*	*
Section 2153.B., 2153.B.1.d.–d.ii., 2153.B.3.–4.b.	Control Requirements	5/20/1999, 10/20/2016	7/5/2011, 76 FR 38977, 10/5/2022 [Insert **Federal Register** citation]..	Section 2153.B.1.i is no longer in SIP, 10/5/2022.
*	*	*	*	*

* * * * *

[FR Doc. 2022–21248 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0184; FRL–10228–01–OCSPP]

IN–11460: 2-Propenoic Acid, Polymer With Ethene, Ethenyl Acetate and Sodium Ethenesulfonate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate (CAS Reg. No. 429691–44–1) when used as an inert ingredient in a pesticide chemical formulation. Celanese Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate on food or feed commodities.

DATES: This regulation is effective October 5, 2022. Objections and requests for hearings must be received on or before December 5, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0188, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0188 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 5, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified

by docket ID number EPA–HQ–OPP–2022–0188, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets.*

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

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2021 (86 FR 15162) (FRL–10021–44), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11460) filed by Celanese Corporation (9502 Bayport Blvd., Pasadena, TX 77507). The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate (CAS Reg. No. 429691–44–1), with a minimum number average molecular weight of 5,600 Daltons. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any public comments.

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

III. Risk Assessment and Statutory Findings

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate, with a minimum number average molecular weight 5,600 Daltons, conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize: An adequate biodegradation study (MRID 51976001) demonstrates that 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate, with a minimum number average molecular weight 5,600 Daltons, is not readily biodegradable.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.
7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_{3-} or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

The polymer's number average molecular weight (MW) of 5,600 Daltons is greater than 1,000 Daltons and less than 10,000 Daltons. However, the polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate is 5,600 Daltons. Generally, a polymer of

this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

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

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

EPA has not found 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate.

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

XI. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 180

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

Dated: September 28, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, amend table 1 by adding, in alphabetical order, the polymer ''2-Propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate, minimum number average molecular weight (in amu) 5,600'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate, minimum number average molecular weight (in amu) 5,600	429691–44–1
* * * * * * *	

[FR Doc. 2022–21580 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0152; FF09E22000 FXES11130900000 212]

RIN 1018–BE62

Endangered and Threatened Wildlife and Plants; Removing the Snail Darter From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the snail darter (*Percina tanasi*), a small freshwater fish native to the Tennessee River watershed, from the Federal List of Endangered and Threatened Wildlife (List). This final rule is based on a thorough review of the best available scientific and commercial information which indicates that the threats to the species have been reduced or eliminated to the point that it has recovered and is no longer in danger of extinction or likely to become in danger of extinction in the foreseeable future. Therefore, the species no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: This rule is effective November 4, 2022.

ADDRESSES: This final rule, the post-delisting monitoring plan, and supporting documents (including the recovery plan and 5-year review summary) are available on the internet at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152 or at *https://ecos.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38506; telephone 931–528–6481. Direct all questions or requests for additional information to ''SNAIL DARTER QUESTIONS'' at the address above. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant removal from the Federal List of Endangered and Threatened Wildlife (*i.e.,* ''delisting'') if it no longer meets the definition of an endangered species or a threatened species. Delisting a species can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. We are delisting the snail darter (*Percina tanasi*) based on its recovery. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to the snail darter.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the threats to the species have been reduced or eliminated so that the snail darter no longer meets the definition of an endangered or threatened species under the Act.

Under the Act, we must review the status of all listed species at least once every 5 years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered, or (3) the original data used at the time the species was classified were in error. Here, we have determined that the snail darter has recovered; therefore, we are delisting it.

Peer review and public comment. We evaluated the species' needs, current conditions, and future conditions to support our September 1, 2021, proposed rule to delist the snail darter (86 FR 48953). We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the proposed rule and draft post-delisting monitoring plan. We considered all comments and information we received during the public comment period on the proposed rule when developing this final rule.

Previous Federal Actions

On October 9, 1975, we published a final rule in the **Federal Register** (40 FR 47505) listing the snail darter as an endangered species due to the threat of

the impoundment of the only known location of the species by the completion of Tellico Dam. On April 1, 1976, the Service designated 16.5 miles (26.4 km) of the lower Little Tennessee River as critical habitat for the snail darter (41 FR 13926). In 1977, the critical habitat for the snail darter was amended to include a map (42 FR 47840). The Snail Darter Recovery Team prepared the initial recovery plan for the snail darter on April 4, 1979 (Hurst et al. 1979, entire). The plan was revised and finalized on May 5, 1983 (Service 1983, entire). Due to successful translocations into the Hiawassee and Holston Rivers and the discovery of additional populations, we reclassified the snail darter from endangered to threatened and rescinded critical habitat on July 5, 1984 (49 FR 27510). In 2013, we completed a 5-year review for the snail darter. No change in the species' listing classification was recommended as a result of that 5-year review. We initiated a second 5-year review for the species on April 11, 2019 (84 FR 14669), and on July 16, 2019, we were petitioned to delist the snail darter. We were already reviewing the status of the species as part of the 5-year review and, upon receiving the petition, determined that there was substantial scientific and commercial information indicating the delisting the snail darter may be warranted. On September 1, 2021, we published a proposed rule to remove the snail darter from the Federal List of Endangered and Threatened Wildlife (86 FR 48953) and announced the availability of a draft post-delisting monitoring plan. The September 1, 2021, proposed rule to delist the snail darter also serves as our 5-year review, and 90-day and 12-month findings on the petition.

Summary of Changes From the Proposed Rule

We considered all comments and information that we received during the comment period for the proposed rule to delist the snail darter (86 FR 48953; September 1, 2021). We made minor editorial changes and revised various sections of the rule based on public and partner comments. We also incorporated an additional study (Jones et al. 2015) into our evaluation of the effects of climate change on the species. The information from this study added to the evidence of variability in the weather but did not change our understanding of how climate change will affect the snail darter overall.

Background

Taxonomy

The snail darter is a small fish in the perch family, Percidae, and darter subfamily, Etheostomatinae. The species was first discovered in 1973 (Starnes 1977, p. 1). At that time, and when listed in 1975, the snail darter was recognized as a new, undescribed species in the genus *Percina* and subgenus *Imostoma.* The species was described in 1976 as *Percina tanasi,* named after the historic Cherokee town of Tanasi, near where the snail darter was first discovered (Etnier 1976, p. 485). The snail darter has been recognized as the sister species (closest relative) to the stargazing darter (*P. uranidea*) (Etnier 1976, p. 480; Near and McEachran 2002, p. 8).

Population Genetics

No studies have been completed to determine the level of gene flow between populations or the amount of potential inbreeding within populations. Because snail darters are often found in the lower portions of tributaries, it is likely that tributary populations are part of larger mainstem metapopulations (Service 2013, p. 13). It is not clear to what level the mainstem populations are isolated by the large Tennessee Valley Authority (TVA) dams and reservoirs.

Species Description

The following description is modified from Etnier (1976, pp. 480–485) and Etnier and Starnes (1993, pp. 587–590). The snail darter is a small benthic (bottom-dwelling) fish that grows to 3.55 inches (in) (90 millimeters (mm)). The base color is brown or brownish grey with some green. The back has four clear black or dark brown saddle markings. These markings extend down the sides toward the series of blotches along the lateral line. A dark suborbital bar or ''teardrop'' marking is present below the eye. Fin rays are usually speckled, but pelvic and anal fins are sometimes clear. Males gain a blue-green sheen on the sides and belly during the breeding season when golden flecks become more pronounced on the cheeks and pectoral fins. Females also develop some gold coloring but are less bright than the males. Breeding tubercles (small bony protrusions) form on the rays of the elongated anal fin of males as well as the lower surfaces of rays of the pelvic fins, caudal (tail) fin, and branchiostegal (soft gill cover under head) rays.

The snail darter may occur with two other *Imostoma* darters, the river darter (*Percina shumardi*) and the saddleback darter (*P. vigil*). The snail darter differs from the river darter by having four saddle markings along its back, while the latter lacks saddles altogether. Snail darters and river darters are often found together, but river darters tend to be associated with slightly larger substrate than snail darters (Matthews 2020, pers. comm.). While these species may share similar habitat, there is no evidence that they compete for resources.

Habitat

The snail darter occurs in flowing sections of medium to large rivers. In these streams, snail darters are predominantly found over clean gravel without significant silt or plant coverage (Ashton and Layzer 2010, p. 615). Initially thought to require shallow, unimpounded portions of river to survive (Starnes 1977, pp. 21–23), snail darters were later found in the impounded but flowing upper sections of mainstem Tennessee River reservoirs (Hickman and Fitz 1978, p. 80). Snail darters were found in shoals at a depth of 1 to 3 feet (ft) (0.3 to 1 meters (m)) (Starnes 1977, pp. 21–33; Ashton and Layzer 2010, entire). Snail darters have also been found on gravel and cobble patches in up to 25 ft (7.6 m) of water with regular captures at 10 to 15 ft (3 to 5 m) deep (Ripley 1976, entire; Hickman and Fitz 1978, pp. 80–83; Matthews 2017, pers. comm.; Matthews 2019, pers. comm.). In addition to large river habitats, snail darters also occupy the lower reaches of larger creeks, and during the breeding season, large numbers of darters congregate on the gravel shoals in these creeks to spawn (Starnes 1977, p. 64). Detailed descriptions of snail darter habitat can be found in Ashton and Layzer (2010, entire) and Starnes (1977, pp. 21–33).

Life History

The life history data presented here are modified from Etnier and Starnes (1993, p. 588), with additions from Hickman and Fitz (1978, pp. 10–38) and Starnes (1977, entire). The snail darter is well adapted to its habitat of clean gravel substrate in large creeks and rivers. The saddle markings on the back of the fish act as camouflage amongst gravel and small cobble, and are a pattern seen in other benthic species (Armbruster and Page 1996, pp. 250–252). Snail darters also can burrow into the substrate with just their eyes exposed to escape predation (Etnier and Starnes 1993, p. 588). The species spawns in the late winter and early spring, from about February to April. Adults gather on shoals during the breeding season. While spawning has not been directly observed, it is likely

that the eggs are buried shallowly in the sand and gravel similar to how other *Percina* species bury their eggs. Females produce about 600 eggs per season during multiple spawning events. Eggs hatch after 15–20 days and produce pelagic (in the water column) larvae that drift considerable distances downstream. The developing larvae and juveniles likely use relatively calm deeper areas of rivers and reservoirs. By the end of summer, juveniles are about 1.6 in (40 mm) in length and begin migrating upstream. Some fast-growing individuals may reach sexual maturity in their first year, but most mature in their second year (Etnier and Starnes 1993, p. 588). Snail darters are short-lived fish that rarely survive to their fourth year. As their name implies, snail darters mostly feed on freshwater snails, predominantly in the genera *Leptoxis* and *Lithasia,* as well as caddisfly and dipteran (true fly) larvae (Etnier and Starnes 1993, p. 588).

Distribution

When we listed the snail darter (40 FR 47505; October 9, 1975), the species was only known from about 13 miles (21 kilometers (km)) of the lower Little Tennessee River in Loudoun County, Tennessee. Shortly thereafter, the species was found in the Watts Bar Reservoir portion of the Tennessee River below the mouth of the Little Tennessee River, and efforts were made to conserve the species by translocating individuals into other suitable streams (Hickman and Fitz 1978, pp. 80–83). Snail darters were collected from the Little Tennessee River and stocked into the Hiwassee, Holston, Nolichucky, and Elk Rivers beginning in 1975 to achieve this objective. The introductions into the Nolichucky and Elk Rivers were halted when sharphead darters (*Etheostoma acuticeps*), a species once thought extinct, were rediscovered there, causing concern about competition between the two species. However, the introductions into the Holston and Hiwassee Rivers were successful, and it is thought that the populations in the French Broad and Ocoee Rivers were established by dispersal from these populations (Ashton and Layzer 2008, pp. 55–56). These locations are presented on a map in figure 1, below.

After the completion of Tellico Dam on the Little Tennessee River, snail darters were located in five additional tributaries and three reservoirs: Little River (1983), Big Sewee Creek (1981), Chickamauga Reservoir (1976), Nickajack Reservoir (1981), South Chickamauga Creek (Tennessee and Georgia portions) (1980), Guntersville Reservoir (Tennessee portion) (1981), Sequatchie River (1981), and Paint Rock River (Alabama portion) (1981) (Service 1983, pp. 12–19; Service 2013, p. 7). A survey in 2005 located the species in seven of the nine tributaries surveyed: French Broad River, Hiwassee River, Holston River, Little River, Sequatchie River, Big Sewee Creek, and South Chickamauga Creek (Ashton and Layzer 2008, p. 54). This survey appears to be the last known record of snail darters in Big Sewee Creek (Simmons 2019, unpublished data). In this survey, snail darters were not located in the Paint Rock River or Ocoee River, though they were discovered at both locations in later years (Kuhajda 2018, unpublished data). In 2007, a single snail darter was collected in Citico Creek, suggesting that snail darters may have persisted in the Little Tennessee River watershed after the dam was constructed; however, they were not found in follow-up surveys (Service 2013, p. 7).

More recent survey efforts have continued to document new snail darter locations, though with limited information on persistence. In 2012, two snail darters were collected in the Flint River in Alabama (Simmons 2019, p. 1), but they have not been found there since. In 2015, snail darters were collected in the Elk River in Alabama and in Bear Creek in Alabama and Mississippi, over 100 river miles (160 km) from the Flint River location. To verify these collections, TVA began an effort to survey the mainstem Tennessee River reservoirs for snail darters (Simmons 2019, p. 2), collecting snail darters from six reservoirs in Tennessee and Alabama: Chickamauga, Nickajack, Guntersville, Wheeler, Pickwick, and the French Broad River arm of Fort Loudoun Reservoir (Simmons 2019, p. 7; TVA unpublished data). Later surveys of the reservoirs located juvenile snail darters in Watts Bar Reservoir (Matthews 2020, pers. comm.), but trawling efforts did not locate individuals in Tellico, Wilson, and Kentucky Reservoirs (Simmons 2019, p. 6).

In 2017 and 2018, an environmental DNA survey was conducted for snail darters in the Alabama portion of the Tennessee River Basin (Shollenberger 2019, p. 6). Environmental DNA (eDNA) is a surveillance tool used to monitor for the genetic presence of an aquatic species. These surveys returned positive eDNA detections in the following streams and reservoirs where TVA surveys had physically collected snail darters during previous survey efforts: Guntersville Reservoir, Wheeler Reservoir, Paint Rock River, Elk River, Pickwick Reservoir, and Bear Creek. The eDNA surveys returned negative results at locations where snail darters had not been collected recently, such as Wilson Reservoir and the Flint River, although an eDNA detection was found and then validated in 2020 in Shoal Creek, a tributary to Wilson Reservoir (Johnson 2020, p. 2).

In summary, the snail darter's known range has greatly expanded since it was first discovered (see figure 1, below). At the time of listing in 1975, the species was only known from a small reach of the Little Tennessee River. By the early 1980s, new populations had been found or established in 10 widely dispersed locations, and in 1984, we reclassified the snail darter from an endangered to a threatened species (49 FR 27510; July 5, 1984), due largely to an increased number of populations and a considerable range expansion. Since 2010, populations in an additional two reservoirs and three tributaries have been discovered (Simmons 2019, pp. 1–2). As a result, snail darters are now considered extant in seven mainstem reservoirs of the Tennessee River (Fort Loudoun, Watts Bar, Chickamauga, Nickajack, Guntersville, Wheeler, and Pickwick) and 12 tributaries in the Tennessee River watershed (Holston River, French Broad River, Little River, Hiwassee River, Ocoee River, South Chickamauga Creek, Sequatchie River, Paint Rock River, Flint River (two individuals), Elk River, Shoal Creek (one individual), and Bear Creek). We consider the snail darter extirpated from the Little Tennessee River mainstem, Citico Creek, and Sewee Creek, and never established in the Nolichucky River.

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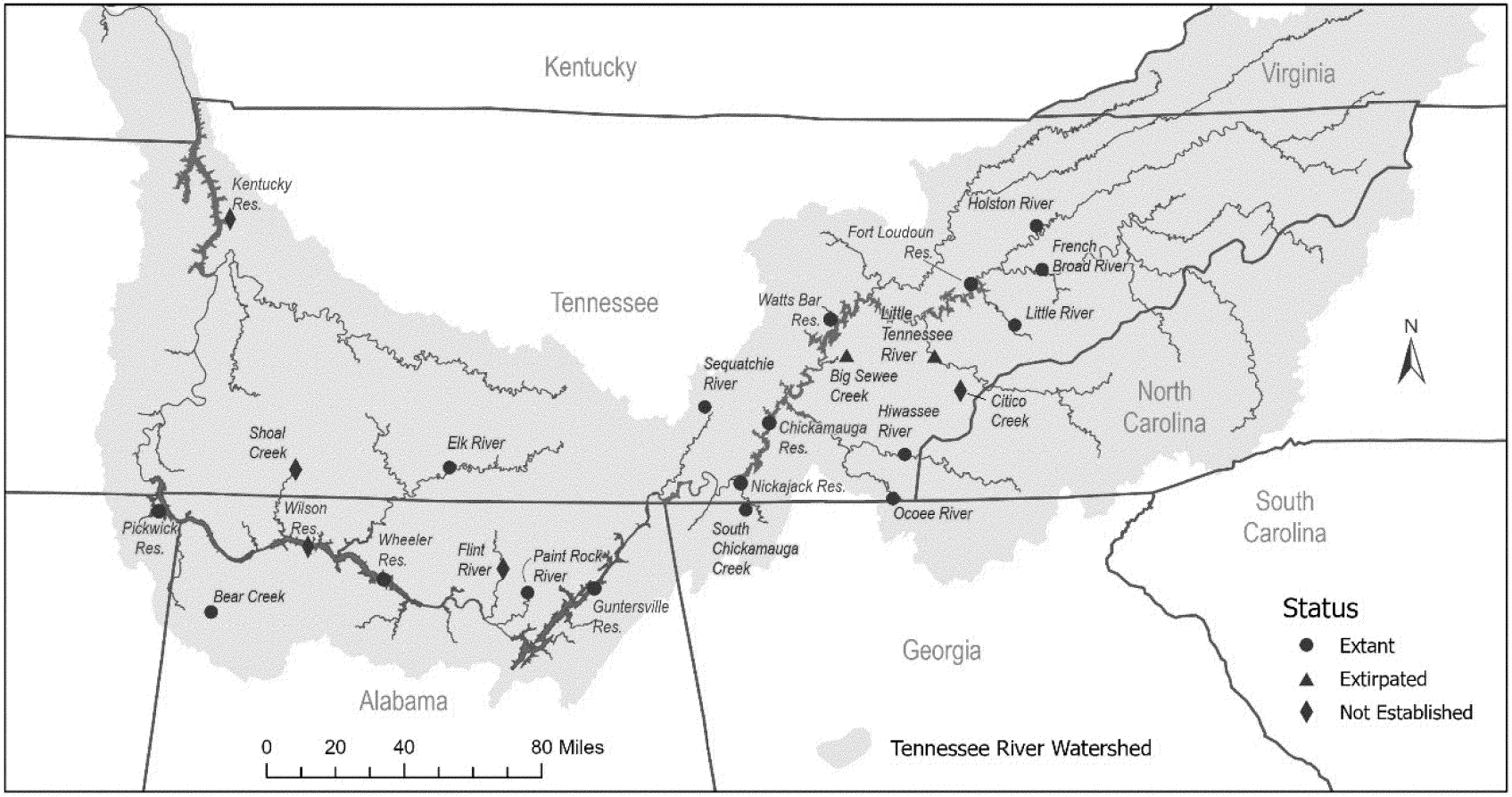

Figure 1. Current range and status of snail darter populations in the Tennessee River watershed. Points represent occupied tributaries and reservoirs, not exact collection locations.

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Evaluating Populations

The best available scientific information does not allow us to determine population size for the snail darter. Therefore, our assessment was based on monitoring of the stream community conducted by TVA throughout the Tennessee River Basin using an index of biotic integrity (IBI) approach. The IBI uses fish community metrics, such as percent insectivore, to develop a score of stream health. These surveys target a representative sample of the overall fish assemblage rather than individual species, so are not designed to provide population size information on rare species but are useful for determining species persistence at a site. Occasional encounters by IBI monitoring crews provide information in the intervening years, but many of these surveys took place in wadable portions of streams, missing the deeper water habitats often used by the species. Where snail darters are common near IBI sites, surveyors intentionally avoid their habitat to reduce the probability of injury, which can result in artificially reduced numbers of the species in samples. The wide variety of methods used during previous survey efforts also makes comparing populations difficult. Surveys targeted at other species only note incidental sightings of snail darters, not density, and the TVA trawls have mostly been carried out to determine the species' presence and range (Simmons 2019, p. 1). However, the best available science indicates that reproducing populations of the species likely exist in at least 16 locations (6 reservoirs and 10 tributaries) based on repeated collections that have been made at those locations, evidence of multiple age classes at those locations (*i.e.,* suggesting regular recruitment into the population), and multiple males and females captured at those locations (see tables 1 and 2 in Summary of Biological Status, below).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act (16 U.S.C. 1531 *et seq.*) directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available and consideration of the standards listed in 50 CFR 424.11(e) to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The snail darter recovery plan (Service 1983, entire) included recovery criteria to indicate when threats to the species have been adequately addressed and prescribed actions that were thought to be necessary for achieving those criteria. We summarize the criteria and then discuss progress toward meeting the recovery criteria in the following sections.

Recovery Criteria

The objective of the recovery plan is to protect and recover the snail darter to the point where it can be removed from the Federal List of Endangered and Threatened Wildlife. The recovery plan states that the species ''shall be considered recovered when one of the alternatives (A, B, or C) listed below is met and no present or foreseeable threats exist that could cause the species to become in danger of extinction'' (Service 1983, p. 27).

- *Alternative A:* Suitable habitat areas of the Tennessee River within the area from the backwaters of Wheeler Reservoir upstream to the headwaters of Watts Bar Reservoir are inhabited by snail darter populations that can survive and reproduce independently of tributary rivers as evidenced by documented reproduction in Watts Bar Reservoir or some other Tennessee River reservoir.
- *Alternative B:* More Tennessee River tributary populations of the species are discovered, and existing populations are not lost. The number of additional populations needed to meet this criteria would vary depending on the status of the new populations, but two populations similar to the Big Sewee Creek, South Chickamauga Creek, or Sequatchie River populations, or one comparable to the Hiwassee River population, would denote recovery.
- *Alternative C:* Through maintenance of existing populations and/or by expansion of these populations, there exist viable populations of snail darters in five separate streams such as Big Sewee Creek, Hiwassee River, South Chickamauga Creek, Sequatchie River and Paint Rock River. (For this alternative, ''viable populations'' means that population monitoring over a 10-year period (biannual sampling) indicates that the snail darter is reproducing (at least two year classes present each year sampled) and that the population is either stable or expanding. For some populations, existing data may be used to meet this requirement.)

Achievement of Recovery Criteria

Alternative A of the recovery criteria requires that snail darters be present in suitable habitats within reservoirs from Wheeler Reservoir upstream to Watts Bar Reservoir and evidence of reproduction within reservoirs independent of tributaries in at least one reservoir. We conclude that Alternative A has been met based on collection of seven permanent mainstem populations (Pickwick, Wheeler, Guntersville, Nickajack, Chickamauga, Watts Bar, and Fort Loudoun reservoirs) and evidence of reproduction independent of tributaries in Chickamauga, Nickajack, and Wheeler reservoirs (see tables 1 and 2 in Summary of Biological Status,

below, and figure 1 in Background, above). These populations represent multiple reservoirs, rivers and span at least three physiographic regions (Highland Rim, Cumberland Plateau, and Ridge and Valley) (Etnier and Starnes 1993, p. 3; Mettee et al. 1996, p. 5).

Our assessment of the tributary populations of snail darters supports the determination that Alternative B has also been met. Alternative B of the recovery criteria requires the discovery or establishment of at least two new tributary populations similar to the Big Sewee Creek, South Chickamauga Creek, or Sequatchie River populations or one comparable to the Hiwassee River population. In our analysis, we determined that 10 tributary populations are extant that have a moderate or high resilience (see table 1, below). Four of these (French Broad River, Ocoee River, Elk River, and Bear Creek) have been found or established since the recovery plan was finalized. The largest new population occurs in the lower French Broad River. The founders of this population were likely migrants or juveniles from the stocked population in the Holston (Service 2013, p. 14). Snail darters have been collected across at least 21.8 miles (35.1 km) of the French Broad River and across 19 miles (30.5 km) of the Hiwassee River (Ashton and Layzer 2008, pp. 54–55; Kuhajda 2018, supplementary data; TVA, unpublished data). Therefore, the requirement to discover or establish a population comparable to the Hiwassee River population has been met.

Additionally, Alternative B gives the option of two tributary populations comparable to Big Sewee Creek, South Chickamauga Creek, and Sequatchie River. The current populations in the Ocoee River and Bear Creek are comparable to the Big Sewee Creek, South Chickamauga Creek, and Sequatchie River populations that existed at the time the recovery plan was finalized based on captures and occupied stream length.

Since 2011, snail darters have been found consistently in the Ocoee River by TVA IBI crews, appearing in every biannual sample since 2015. Snail darters have been collected across 5.9 miles (9.5 km) of the Ocoee River, and collections of snail darters in the Hiwassee River near the mouth of the Ocoee suggest that they may occupy more of the river.

Snail darters have only been collected as individuals or pairs, but the lower portion of Bear Creek is in the Gulf Coastal Plain physiographic region, so preferred habitat is more limited than in other streams. Individuals have been collected across 5.8 miles (9.3 km) of Bear Creek, but trawling collections near the mouth of Bear Creek and eDNA detections in the lower parts of the Bear Creek system and at its mouth suggest that snail darters may occur in an additional 25 miles (40 km) of the creek (Simmons 2019, supplementary data; Shollenberger 2019, pp. 14–16).

Since 2015, snail darters have been collected in 1.4 miles (2.3 km) of the Elk River in Tennessee. Snail darters may also occur in the Alabama portion of the Elk River over more than 20 river miles of free-flowing stream down to the portion of the river inundated by Wheeler Reservoir (Simmons 2019, supplementary data; Shollenberger 2019, pp. 14–16).

Our assessment of the tributary populations of the snail darter supports the determination that Alternative B has been met based on the establishment of the French Broad River population that is comparable to the Hiwassee population. Additionally, the Ocoee River, Bear Creek, and Elk River populations are comparable to the Big Sewee Creek historical population, which was found across 4.2 miles of stream, exceeding the prescription in Alternative B for at least one additional large population or two additional small populations.

The intent of Alternative C has been fulfilled because the documented conditions are functionally equivalent to those prescribed. This alternative of the recovery criteria calls for the maintenance of viable populations in five separate streams. The definition for viable populations in the 1983 recovery plan requires biannual monitoring over a 10-year period with enough data to demonstrate a stable or increasing population size and evidence of reproduction indicated by the presence of at least two year classes present in each year sampled. The best available monitoring data do not allow us to determine whether populations meet this definition, because most of our collections come from TVA IBI surveys that are not species-specific. However, our analysis of the tributary populations found 10 populations that were considered at least moderately resilient (see table 1 in Summary of Biological Status, below), which we conclude is equivalent to a determination that the populations are viable. Of these, nine met the requirement of Alternative C that at least two year classes be present. The discovery of populations in Bear Creek, Elk River, Wheeler Reservoir, and Pickwick Reservoir since 2009 shows evidence of either species expansion or growth of existing populations to the level of detection (see table 2 in Summary of Biological Status, below). The presence of resilient populations in 10 tributaries and 7 mainstem reservoirs across four physiographic regions provides evidence of high redundancy and representation for the species (see further explanation of these terms in *Analytical Framework,* below).

In summary, alternative pathways to recovery A and B have been met or exceeded, and the intent of alternative C has been fulfilled. The recovery plan only required one of the three alternative pathways to be met. Therefore, we conclude that the recovery criteria established by the plan have been surpassed.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species,'' issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical-habitat decisions. Accordingly, in developing the analysis contained in this final rule, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 17.31, 17.71, 424.02, 424.11(d) and (e), and 424.12(a)(1) and (b)(2). Because of the ongoing litigation regarding the court's vacatur of the 2019 regulations,

and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the final rule would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same decision if we had applied the 2019 regulations. This is because both before and after the 2019 regulations, the standard for whether a species warrants delisting has been, and will continue to be, whether the species meets the definition of an endangered species or a threatened species. Further, we concluded that our determination of the foreseeable future would be the same under the 2019 regulations as under the pre-2019 regulations.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen's Ass'n,* No. 22–70194). The effect of the stay is that the 2019 regulations are the governing law. Because of our desire to remove regulatory burdens in a timely manner whenever species no longer meet the definition of an endangered or threatened species, rather than revise the proposal in response to the Ninth Circuit's decision for submission of a final rule to the **Federal Register**, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the final rule. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this final rule would have been the same if we had applied the 2019 regulations.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. The determination to delist a species must be based on an analysis of the same five factors.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations regarding the foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). That Solicitor's opinion states that the foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' Id. at 13.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

To assess species viability, we use the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate change). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels and described the beneficial and risk factors influencing the species' viability.

Summary of Biological Status

Resiliency Analysis

As explained above in *Evaluating Populations,* the existing data available do not allow us to estimate population sizes for snail darter. However,

collections over multiple years and the presence of multiple age classes provide evidence of persistence in tributaries throughout the snail darter's range. In the reservoirs, the capture of multiple individuals and evidence of multiple age classes typically represents a sustainable population. Where available, presence of snail darters in breeding condition is used as additional evidence of spawning, because snail darters move onto the spawning ground before spawning commences (Starnes 1977, p. 64). We used IBI scores from fixed monitoring stations to address stream health where possible for tributary populations. These scores are generated from fish assemblage surveys throughout the Tennessee River Valley that rank streams from 12 to 60 (poor to excellent) based on metrics such as total number of species, proportions of intolerant and tolerant species, and the numbers of species in various ecological guilds (TVA 2005, pp. 5–7). We use these measures to describe the resiliency of the snail darter populations and their contributions to the species' recovery.

Tributary Resiliency—We characterized snail darter population resiliency in 14 tributaries (11 extant populations, one extirpated, and two apparently not established with only one collection each and no evidence of reproduction) using data related to three factors: collections in multiple years since 2009, presence of multiple year classes in these samples, and TVA IBI scores for the tributary populations (see resiliency scores for these factors in table 1, below). Detection of the species in multiple years provides evidence of persistence within a tributary. Consistent collections also indicate population numbers that are high enough to be detected using non-depletion methods (not every fish in a sample reach is caught), which is relevant for species like the snail darter that are difficult to capture with standard fish sampling equipment. The presence of multiple age classes is evidence of successful reproduction in the population. Given that snail darters only live 4 years and likely do not mature until their second year, it would only take a few years of failed reproduction for a population to be extirpated (Etnier and Starnes 1993, p. 588). We reviewed the available data to determine population scores for each of the tributaries. The best available data are not sufficient to determine snail darter population size or trends due to the typically small numbers collected at any given site; however, we can address resiliency of the tributary populations by looking at persistence over time and evidence of reproduction. To do this, we used data from snail darter collections and observations from TVA and Conservation Fisheries, Inc., and data compiled by the Tennessee Aquarium Conservation Institute.

We used IBI scores to address stream community health where possible for tributary populations. Measuring the overall fish community is a way to investigate habitat quality, water quality, and ecosystem stability by proxy of the fish that live in the stream. The IBI incorporates 12 metrics to measure fish community health based on the number of species or proportion of individuals in different guilds (group of species with similar life history) compared to what is expected in a reference condition stream. These metrics are adjusted based on stream size and physiographic region in order to be relevant to the differences in natural conditions across the Tennessee River Basin. Each metric is assigned a value matching a ranking of good (5), fair (3), or poor (1). The 12 metrics are then summed for each, yielding an overall rating of the stream community health. An IBI score of 12 to 22 equates to a very poor rating, 28 to 34 to a poor rating, 40 to 44 to a fair rating, 48 to 52 to a good rating, and 58 to 60 to an excellent rating. Scores between these ranges received intermediate ratings (TVA 2005, entire). To determine potential IBI trends, we compared overall IBI scores for sites within the range of snail darters in each tributary from 2009 to 2019. Roughly half of the tributaries (French Broad River, Little River, Hiwassee River, Ocoee River, Elk River, and Flint River) showed some improvement during the 1999–2009 period, but during the 2009–2019 analysis period, the communities in all of the tributaries were mostly stable.

We combined the population metrics to give a population score (low, medium, or high), and the habitat metrics combined to form a composite habitat score (low, medium, or high). These scores are compiled in table 1, below. The population and habitat scores were averaged to provide the overall resilience score. Tributaries with multiple collections (of several fish each collection) and multiple age classes over the 12-year period were ranked high; conversely, those with only one collection and no evidence of reproduction were considered not established. Age classes were assigned by body length, based on life-history studies (Starnes 1977, pp. 47–63; Hickman and Fitz 1978, pp. 10–19). Sites with multiple collections but only one age class were ranked low. Tributaries with good or better IBI scores that were stable or improving were then ranked high, and tributaries with fair IBI scores with stable or improving conditions were ranked moderate. Overall resilience was calculated by averaging the column scores. Where snail darters had been extirpated or not established, IBI scores were not incorporated. While the habitat in Little River is very good, we found that the low numbers (three or fewer individuals in any single observation) of snail darters captured and the lack of multiple age classes did not warrant categorizing the Little River population as moderate or high. Our results of the tributary resiliency analysis are summarized in table 1.

TABLE 1—TRIBUTARY POPULATION RESILIENCY BASED ON COLLECTION DATA AND TVA IBI SCORES FROM 2009–2019

Tributary	Multiple detections	Multiple age classes	Population score	IBI score	IBI trend	Habitat score	Overall resiliency
Holston River	Yes	Yes	High	Fair	Stable	Moderate	Moderate/high.
French Broad River	Yes	Yes	High	Fair/good	Stable or improving	High	High.
Little River	Yes	No	Low	Good/excellent	Stable	High	Low.
Citico Creek	No	No	Not established	Good	Stable	High	Not established.
Big Sewee Creek	No	No	Extirpated	Poor/fair	Stable	Low	Extirpated.
Hiawassee River	Yes	Yes	High	Good/excellent	Stable	High	High.
Ocoee River	Yes	Yes	High	Fair	Stable	Moderate	Moderate/high.
South Chickamauga Creek.	Yes	Yes	High	Fair	Stable or declining	Moderate	Moderate/high.
Sequatchie River	Yes	Yes	High	Fair	Stable or declining	Moderate	Moderate/high.
Paint Rock River	Yes	Yes	High	Fair/good	Stable	High	High.
Flint River	No	No	Not established	Fair	Insufficient data	Moderate	Not established.
Elk River	Yes	Yes	High	Fair/good	Stable or improving	High	High.
Shoal Creek	No	No	Not established	Good	Stable or improving	High	Not established.

TABLE 1—TRIBUTARY POPULATION RESILIENCY BASED ON COLLECTION DATA AND TVA IBI SCORES FROM 2009–2019—Continued

Tributary	Multiple detections	Multiple age classes	Population score	IBI score	IBI trend	Habitat score	Overall resiliency
Bear Creek	Yes	Yes	High	Good	Stable or improving	High	High.

Reservoir Resiliency—Using the data available from the TVA snail darter trawl surveys (Simmons 2019, p. 3), we analyzed resiliency of the reservoir populations based first on the number of individuals captured and second, evidence of reproduction with evidence of reproduction established either through presence of multiple age classes, adults in spawning condition (gravid females and/or males flowing milt [sperm]), or juveniles. To categorize number of individuals, we classified collections of 0–4 individuals as low, 5–9 as moderate, and 10 or more as high. To classify reproduction, given the limited sampling effort to date, collection of more than one age class or other evidence of reproduction resulted in a high rating in the reproduction metrics. Collection of only one age class or no other evidence of reproduction resulted in a low rating. Similar to the stream population, overall resilience was calculated by averaging the scores of the number collected and reproduction metrics. Results are summarized below in table 2.

TABLE 2—RESERVOIR POPULATION COLLECTIONS BASED ON TVA BENTHIC TRAWLS, 2016–2019 *

Reservoir	Population score (number collected)	Age classes	Evidence of reproduction	Reproduction score	Overall resilience
Fort Loudoun	Low (2)	2	No	High	Moderate.
Watts Bar	Low (3)	1	Yes	High	Moderate.
Chickamauga	Low (4)	2	Yes	High	Moderate.
Nickajack	High (11)	2	Yes	High	High.
Guntersville	High (33)	2	No	High	High.
Wheeler	High (18)	2	Yes	High	High.
Wilson	Low (0)	0	No	N/A	Not established.
Pickwick	High (18)	3	No	High	High.
Kentucky	Low (0)	0	No	N/A	Not established.

* Age classes based on total length measurements from Hickman and Fritz (1978). Evidence of reproduction is based on capture of juvenile individuals, adults in spawning condition, or multiple age classes (Simmons 2019, p. 7).

For the purpose of evaluating the snail darter's status, we considered those tributaries that ranked moderate or high as contributing to resiliency. Because of the limited amount of reservoir sampling that has been completed, we considered those reservoir populations that had evidence of reproduction present as permanent, independent populations (Simmons 2019, p. 2) that contribute to resiliency. We, therefore, considered 7 reservoir populations (Fort Loudoun, Watts Bar, Chickamauga, Nickajack, Guntersville, Wheeler, and Pickwick) and 10 tributary populations (Holston, French Broad, Little, Hiwassee, Ocoee, Sequatchie, Paint Rock, and Elk Rivers, and South Chickamauga and Bear Creeks) as contributing to species resiliency. We did not count Wilson Reservoir or Kentucky Reservoir toward resiliency because snail darters had never been collected there despite trawling efforts. While Watts Bar is only represented by three juveniles, their collection far from any large tributaries is evidence of reproduction within the reservoir. We did not consider Citico Creek, Big Sewee Creek, Flint River, or Shoal Creek as contributing toward resiliency either because the species had not been collected there within the analysis period despite multiple efforts (Big Sewee Creek, Citico Creek) or because a single snail darter had been found on only one occasion (Shoal Creek, Flint River); therefore, we considered the populations to be not established in those locations (see table 1, above).

Analysis of Redundancy and Representation

With discoveries of new tributary and reservoir populations, the known redundancy and representation of the snail darter has expanded during the analysis period. When we listed the species (40 FR 47505; October 9, 1975), it had very low redundancy and representation because only one population was known from several miles of the Little Tennessee River, in the Ridge and Valley physiographic region. Currently, the species is known across more than 400 miles (640 km) of the Tennessee River Valley, with moderately to highly resilient populations in 9 tributaries and 7 reservoirs, providing a level of redundancy that helps shield the species from localized stochastic events.

While we do not have population genetic data for the snail darter, we can look at the species' ability to adapt to changes in the environment (representation) by looking at its distribution across a range of habitats and physiographic regions. Resilient populations are currently known from streams ranging in size from mid-sized creeks to the large Tennessee River itself, with collections in depths ranging from less than 3 ft (1 m) to 25 ft (7.6 m). These populations occur in reservoirs and tributaries with these conditions in four different physiographic regions (Ridge and Valley, Cumberland Plateau, Highland Rim, and Gulf Coastal Plain). This wide range of habitat use and geographic distribution helps to demonstrate the snail darter's adaptability to changing environmental pressures (representation).

Summary of Factors Affecting the Species

A recovered species is one that no longer meets the Act's definition of an endangered species or a threatened species. Determining whether the status of a species has improved to the point that it can be delisted or downlisted

requires consideration of the same five factors identified above for listing a species. When we initially listed the snail darter as endangered in 1975, the only identified threat influencing its status was the modification and loss of habitat and curtailment of range (Factor A) caused by the completion of Tellico Dam and the flooding of the entire known range of the species. When we reclassified the species as threatened in 1984, we evaluated a more complete list of factors based on improved knowledge of the snail darter's range and life history. These factors included threats to habitat such as shipping activities in the mainstem Tennessee River, impacts from development in some of the tributaries such as South Chickamauga Creek, threats from agricultural runoff and channelization in streams like the Elk River, impacts from coal mining in the Sequatchie River watershed, and chemical spills in the Hiwassee and Ocoee watersheds (Factor A); excessive collection associated with the notoriety of the species (Factor B); and protections afforded the species by State and Federal laws (Factor D). The following analysis evaluates these previously identified threats, any other threats currently facing the species that we have identified, as well as any other threats that are reasonably likely to affect the species in the foreseeable future.

To establish the foreseeable future for the purpose of evaluating trends in the threats and the species' responses, we analyzed trends from historical data on distribution and abundance, ongoing conservation efforts, factors currently affecting the species, and predictions of future climate change. When combined with our knowledge of factors affecting the species (see discussion below), available data allow us to reasonably predict future conditions, albeit with diminishing precision over time. Given our understanding of the best available data, for the purposes of this rule, we consider the foreseeable future for the snail darter to be approximately 30 years. We determined that we can reasonably predict the threats to the species and the species' response during this timeframe based on climate vulnerability assessments through 2050, the planning horizon of the reservoir release improvement program (RRIP), and enough time for the species to respond based on biology and lifespan.

As noted above, when the species was reclassified from endangered to threatened (49 FR 27510; July 5, 1984), the reclassification rule identified additional threats to habitat in the additional populations established or discovered since the original listing (40 FR 47505; October 9, 1975). These included threats from shipping activities in the mainstem Tennessee River, impacts from development in some of the tributaries such as South Chickamauga Creek, threats from agricultural runoff and channelization in streams like the Elk River, impacts from coal mining in the Sequatchie River watershed, and chemical spills in the Hiwassee and Ocoee watersheds.

One of the biggest factors still affecting the snail darter is the impoundment of large portions of the Tennessee River Valley. TVA operates 9 dams on the mainstem Tennessee River and 38 dams on tributaries to the Tennessee River. These impoundments create large areas of deep, still water that do not meet the habitat needs of the snail darter. Snail darters are limited in the depth they can occupy by the presence of food resources. Snails, the darter's preferred prey, live only in water shallow enough for light to penetrate and allow algae to grow on the substrate, about 15–20 ft (5–7 m) in much of the Tennessee mainstem. Impoundment also reduces stream flow and allows fine sediments to settle out, which can cover the clean gravel habitats needed by snail darters. Additionally, these dams were initially operated with a hydropeaking strategy, only releasing water when needed to generate electricity or maintain reservoir level or flood storage capacity. In addition, many of these releases came from the water levels within the reservoir that held cold, oxygen-deficient water. Collectively, these factors created conditions in the tailwaters that negatively affected water quality, food availability, and fish diversity.

Given the long operational lifespan of dams (more than 100 years), it is nearly certain that the TVA reservoirs will be in place for the foreseeable future. However, beginning in 1981, TVA began studies to improve conditions in the tailwaters of their dams. The cold, oxygen-deficient water released from the bottom of many of the dams created conditions that eliminated many fish and mussel species from these areas. Through the RRIP, TVA began implementing strategies to increase minimum flow, dissolved oxygen, and, in some cases, temperature, in the tailwaters of their dams beginning in 1991 (Bednarek and Hart 2005, p. 997). In 2002, TVA conducted a reservoir operation study to consider how to implement these changes across the basin to improve the health of the river (TVA 2004, p. ES–3). The result was to manage the river based on minimum flows instead of reservoir level and improve tailwater conditions. These changes have resulted in significant improvements in biological and abiotic variables and increases in fish and invertebrate diversity in many TVA dam tailwaters (Layzer and Scott 2006, entire; Bednarek and Hart 2005, entire; Scott et al. 1996, entire). These improvements have likely resulted in improved conditions for the snail darter and may have contributed to improvements to the species' status within tailwaters since the 1990s, across more than 400 miles (640 km) of the mainstem of the Tennessee River. Since the RRIP is based on ecologically meaningful parameters in the tailwaters, such as dissolved oxygen and temperature, this program may be able to provide some resiliency to a warming climate and precipitation variability in the future, especially if TVA adjusts the program to maintain the needed conditions in the tailwaters. The reservoir operation study is planned along an approximately 25-year timeline, extending to 2030 (TVA 2004, p. ES–4). However, given the presence of at least 10 other listed aquatic species in the tailwaters of the mainstem Tennessee River reservoirs and the complexities of changing the operations plan, it is highly likely that TVA will continue RRIP as part of its compliance with the Act for these other species beyond the timeline of the environmental impact statement (EIS) and biological opinion that were prepared under section 7 of the Act before alterations were made to dam release management. For these same reasons, TVA will likely incorporate RRIP to protect federally listed mussels when it revisits its EIS around 2030, and because the current EIS's term is 25 years, it is reasonable to assume TVA will issue another 25-year EIS. Therefore, we anticipate that the conditions benefiting the snail darter will continue through at least midcentury (Baxter 2020, pers. comm.). Overall, the persistence and expansion of snail darter populations in the mainstem since the 1970s indicate greater resiliency in these habitats than was considered at the time of listing, particularly now with the implementation of TVA's RRIP.

Anthropogenic changes to the land can also negatively impact the snail darter and its habitats. Sedimentation is one of the biggest threats to water quality in the Tennessee River Valley, including in streams occupied by snail darters. Big Sewee Creek has been impacted by sedimentation from persistent farming in the watershed, reducing the amount and quality of

gravel habitat in the stream. The predominant agricultural activities contributing to sedimentation in Big Sewee Creek (livestock pasture and row crops) are exempt from many State and Federal regulations designed to reduce sediment runoff, and these activities are likely to continue into the future. Therefore, we do not expect this population to reestablish unless habitat conditions improve in the future. Sedimentation from agriculture and development is also considered a concern in the lower Little Tennessee River, Sequatchie River, South Chickamauga Creek, and Paint Rock River watersheds. Watershed-level efforts have been conducted to address sedimentation issues in some of the tributaries where snail darters have been found. The South Chickamauga Creek Land Treatment Watershed Project, an effort of the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA), began in 2001, to reduce the runoff of sediment and nutrients in the watershed by installing animal waste management systems (see 65 FR 44519; July 18, 2000). Additionally, the Limestone Valley Resource Conservation and Development Council is working with a wide variety of partners to implement the South Chickamauga Creek Headwaters Management Plan, developed in 2012, to address water quality issues (Smith and Huser 2012, pp. i–3). In the Paint Rock River, The Nature Conservancy designated a ''landscape conservation area'' and worked to address sedimentation issues from agriculture throughout the watershed, resulting in improved conditions for aquatic fauna (Throneberry 2019, unpublished data). Many of these efforts include restoring natural stream channel characteristics where streams have been channelized. These efforts have been undertaken outside of species-specific recovery efforts for the snail darter, and they are likely to continue regardless of the delisting of the species. Other small-scale efforts have been undertaken to reduce sedimentation in many of the other tributaries inhabited by snail darters. It is likely that sedimentation has resulted in the extirpation of snail darters from Big Sewee Creek, but there is some potential for recolonization by individuals from Chickamauga Reservoir if habitat conditions improve.

Urban and suburban development may impact the snail darter as well. Increases in the amount of impervious surfaces associated with development increase runoff to streams, destabilize hydrology, and increase water temperature. Additionally, residential and commercial development are associated with increased runoff of lawn and automotive chemicals into the streams (Matthaei and Lang 2016, p. 180; Walsh et al. 2005, p. 707). The snail darter tributaries currently most impacted by development and the associated chemical and sediment runoff are South Chickamauga Creek in Chattanooga, Tennessee; Flint River in Huntsville, Alabama; and Little River in Maryville, Tennessee. Based on the SLEUTH (Slope, Land use, Excluded area, Urban area, Transportation, Hillside area) model, these areas are anticipated to have increased suburban and urban growth in the next 30 years, which might further impact South Chickamauga Creek, Flint River, and Little River; there is also the potential for increased urban impacts to the Sequatchie River and Paint Rock River watersheds associated with the growth of Chattanooga and suburban development from Huntsville, respectively (Terando et al. 2014, pp. 1–3). However, based on the moderate resilience of snail darters in South Chickamauga Creek (see table 1, above), some evidence supports a conclusion that the species is resilient to the impacts of urbanization.

Additionally, the Thrive Regional Partnership is a group working to promote responsible growth in a 16-county region in the Greater Chattanooga area. The partnership's goal is to improve communities while maintaining healthy ecosystems. Thrive has identified portions of streams and surrounding land that are key to preserving and enhancing water quality in the region of interest, with the goals of conserving 50 percent of unprotected forest and improving water quality in at least 50 percent of polluted streams by 2055. The area covered by this initiative includes portions of the Big Sewee Creek, South Chickamauga Creek, Sequatchie River, and Paint Rock River watersheds (Thrive Regional Partnership 2019, entire).

The threat of chemical and industrial spills was raised as a potential threat in the downlisting rule (49 FR 27510; July 5, 1984). The range of the snail darter is crossed by several major highways and railroad lines, making the possibility of a spill during transport an ongoing risk. Such spills have occurred as recently as 1991 in the Hiwassee River. While spills may have severe impacts locally, they are unlikely to affect the species as a whole given its wide range in the mainstem of the Tennessee River and several tributaries (Service 2013, p. 18). Furthermore, the Ocoee River has suffered from industrial and mine runoff from the historical copper extraction in the watershed. Within the Ocoee River watershed, concerted efforts have been made to clean up industrial and mine-related pollution, resulting in much improved water quality and a healthier ecosystem which may have contributed to the increased numbers of snail darters seen in that river since the Service's 2013 5-year review (Service 2013, p. 12; Simmons 2019, unpublished data).

The threat to snail darters from coal mining in the Sequatchie Valley has been greatly reduced since the recovery plan was completed. Mining for coal in the Sequatchie Valley ceased in the 1990s, and since that time, there have been efforts to remediate acid mine drainage in the area. Currently, there are no active coal mining permits in the Sequatchie Valley (Office of Surface Mining Reclamation and Enforcement (OSMRE) 2016, p. 34; Interstate Technology & Regulatory Council (ITRC) 2010, entire).

The Tennessee River is a major inland shipping corridor, and in the downlisting rule (49 FR 27510; July 5, 1984), activities associated with barge traffic were considered to potentially threaten snail darters through habitat alterations in the mainstem Tennessee River reservoirs. Barge and large boat wakes can result in significant bank erosion along the river. Within the mainstem reservoirs, bank stabilization efforts have occurred in some significantly impacted areas and reduced sedimentation at those locations, but there is no concerted plan to address this source of sediment across the Tennessee River Basin. However, there is some evidence that areas of consistent traffic, such as barge mooring cells, may provide areas of silt-free habitat swept clean by tug engines (Matthews 2017, pers. comm.; Walker and Alford 2016, p. 1101).

In summary, while effects to snail darter habitat (Factor A) associated with continued urbanization and agriculture are certain to persist into the foreseeable future, efforts are being made to reduce the impact to many of the tributaries inhabited by snail darters. Additionally, snail darters appear to be resilient to current levels of urbanization and agriculture, including practices such as channelization, in certain tributaries such as South Chickamauga Creek and Sequatchie River. In the Sequatchie River, the threat from coal mining is reduced with the cessation of mining in the valley and ongoing reclamation efforts. The mainstem populations are less susceptible to sedimentation and runoff associated with agriculture and urbanization due to the buffering

capacity of the larger river, but they still may be affected by bank erosion and industrial transport along the Tennessee River. However, population stability and apparent expansion in the mainstem since the 1970s demonstrate the resiliency of the snail darter within these habitats, especially with the implementation of TVA's RRIP.

At the time of the downlisting rule (49 FR 27510; July 5, 1984), the Service projected that the notoriety of the snail darter could result in an increase in illegal collection (Factor B); however, no such activities have been observed or documented since that rule was published. Snail darters receive some protection against collection from the States. The species is listed as threatened in Tennessee, endangered in Georgia, and protected as a non-game species in Alabama and Mississippi. These protections require State permits for the collection of the species.

The snail darter's habitat is also protected by State water quality laws that require the use of best management practices, such as leaving a riparian buffer, when clearing or building near a stream (Factor D). In Tennessee, any waterway with a State-listed species is designated an ''Exceptional Tennessee Waterway,'' and projects impacting these streams are required to undergo additional review before receiving the necessary State permits. While agriculture is typically exempt from many of the provisions in State laws, various efforts described above, such as those in the Paint Rock River and South Chickamauga Creek, are working to reduce the impact of sedimentation from agriculture on the snail darter. Additionally, the snail darter's range overlaps with the ranges of more than 10 federally endangered mussels. This provides some protection, as entities implementing projects with a Federal nexus, such as infrastructure repair and construction and dam operation, are required to consult with the Service to reduce the impacts to listed species and designated critical habitat. These consultations may result in changes to the project to reduce sedimentation or limit the time of year when construction can take place to reduce disruption to the life history of a species. The protection, restoration, conservation, and management of ecological resources within the snail darter's range have been broadly enhanced through Executive orders and Federal regulations since the species was listed. These include provisions emphasizing the protection and restoration of ecosystem function and quality in compliance with existing Federal environmental statutes and regulations (*e.g.,* National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*)) and endorsing Federal efforts to advance environmental goals. Recent water resources authorizations have also enhanced opportunities for the involvement of the U.S. Army Corps of Engineers and other Federal agencies in studies and projects to specifically address objectives related to the restoration of ecological resources (*e.g.,* section 1135 of the Water Resources Development Act of 1986, as amended, 33 U.S.C. 2201 *et seq.*).

Protections associated with the CWA and State wildlife laws will continue to provide some protection to the snail darter. The fear that the species' notoriety would result in increased collection or other forms of take has not been realized since we reclassified the species to threatened, and collection is unlikely to have a major impact on species resilience in the foreseeable future. Additionally, even if range States were to cease protecting the snail darter, its wide range and current redundancy should minimize its risk of extinction for the foreseeable future.

In addition to the threats mentioned in the downlisting rule (49 FR 27510; July 5, 1984) that are addressed above, we now consider other threats or stressors that reasonably could affect the snail darter in the foreseeable future. One such potential threat is climate change. In the southeastern United States, clear trends in climate predictions are limited. However, annual temperatures are projected to increase; cold days will become less frequent; the freeze-free season will lengthen by up to a month; temperatures exceeding 95 degrees Fahrenheit (°F) (35 degrees Celsius (°C)) will increase; heat waves will become longer; and the number of category 5 hurricanes will increase (Ingram et al. 2013, p. 32). Variability in weather is predicted to increase, resulting in more frequent and more extreme dry years and wet years over the next century, with limited evidence of a directional precipitation trend anticipated in the Tennessee River Valley (Mulholland et al. 1997, pp. 951–955; Ingram et al. 2013, pp. 15, 35). One study (Jones et al. 2015, entire) did find a small, statistically significant negative trend indicating precipitation had decreased between 1950 and 2009 in a parts of the Upper Tennessee River Valley, but overall the trends during this time period were mixed.

There is some evidence that the increased variability may already be taking effect. The two wettest years on record for the Tennessee River Valley (Simmons 2020, unpublished data) are 2018 and 2019. During the late summer and early fall of 2019, the second wettest year overall, parts of the Valley temporarily experienced abnormally dry or drought conditions (USDA Drought Monitor for Tennessee River Valley, October 1, 2019).

Increased rainfall will result in increased runoff, higher river levels, and longer periods of spilling from the top of dams by TVA. During periods of spilling at dams, there is the chance for more oxygenation of tailwaters and temperature mixing that could benefit the snail darter. However, increased rainfall, especially extreme events, would increase runoff of sediment and pollutants into tributaries and eventually into the mainstem. These inputs could potentially degrade spawning and foraging habitat for the snail darter. Increased flows during the spawning season could also increase the distance that the pelagic larvae of snail darters drift before becoming benthic. If the larvae found suitable habitat, increased flow could expand the range of the species and contribute to genetic mixing; however, there is also the chance that larvae could be pushed into unsuitable habitat which would result in reduced survival. Drought would most likely impact the shallower habitats inhabited by snail darters in tributaries. The area of shoal habitat available during periods of low flow could be reduced during a drought. The flows could be further reduced by water extraction for irrigation. These reductions of spawning habitat could result in lower spawning success. If discharge is reduced enough, the clean-swept gravel habitats that the snail darter relies on in the mainstem could begin to retain silt, reducing habitat quality.

There is evidence that the habitat and life history of the snail darter will protect it from predicted changes in climate over the next 30 years. In a 2017 climate change vulnerability assessment of 700 species, the Appalachian Landscape Conservation Cooperative (LCC) ranked the snail darter as ''presumed stable'' through 2050 under predicted climate conditions (Appalachian LCC 2017, supplemental data). Being adapted to large river habitats, the snail darter is less susceptible to impacts from high-flow events. As much of its habitat in the mainstem is already impounded, the effects of high water are less meaningful, and TVA flood control efforts may offset some of the strong flow peaks associated with extreme rain events. The species' preference for deeper water habitats and late winter spawning period protects it from

drought. Deep water habitats are not impacted by droughts as drastically as shallow habitats. The RRIP in TVA tailwaters ensures availability of suitable water for the mainstem populations throughout the year despite the occurrence of drought. Drought is also unlikely to impact spawning events on shoals in tributaries because late winter and early spring are typically the wettest times of the year within the Tennessee River Valley. The snail darter is likely also protected from the projected temperature increases by adaptation to larger streams and the thermal buffering of the large reservoirs on the mainstem.

If we examine current projections beyond our 30-year foreseeable future, under plausible future greenhouse gas concentrations termed representative concentration pathways (RCP), warming temperatures and precipitation projections continue to suggest mixed effects to the species. Relative to 1981–2010, over 2050–2074, the 50th percentile (median) for the Tennessee Region, maximum air temperature warms by 4.4 °F (2.4 °C) in RCP 4.5, whereas the region warms by 6.4 °F (3.6 °C) in RCP 8.5 (Alder and Hostetler 2013, entire). Changes in precipitation are not as apparent. Relative to 1981–2010, over 2050–2074, the 50th percentile (median) for the Tennessee Region, precipitation increases by only 0.2 in (5.1 mm) per month in both RCP 4.5 and RCP 8.5 (Alder and Hostetler 2013, entire). We still consider 2050 as the foreseeable future timeline for this species because the time frame associated with the RRIP and other stressors have the greatest predictability between now and 2050, which allows us to draw stronger conclusions regarding the species response and condition. Additionally, we have greater certainty about the snail darters' response to changing climactic conditions between now and 2050 because we have both the projections and scientific sources that predict the species' response, such as the LCC report. Further, the climate projections are more reliable between now and 2050 as compared to beyond 2050 because the models diverge significantly after 2050, which results in substantial uncertainty regarding how changes in climate will manifest late-century. As a result, we do not consider the snail darter to be vulnerable to the effects of climate change in the foreseeable future.

The increases documented in the abundance and distribution of the snail darter since it was listed in 1975 have led to a better understanding of the current and future condition of the species' resiliency, redundancy, and representation across the range. The observed variations in population size, density, or distribution of the snail darter are typical of metapopulation dynamics. Surveys have shown that individual populations may decline based on localized stressors (*e.g.,* severe sedimentation, toxic spills, streamflow alteration) or their cumulative effects. When threats occur together, one may exacerbate the effects of another, causing effects not accounted for when threats are analyzed individually. However, the best available information does not demonstrate that cumulative effects are occurring at a level sufficient to negatively affect the species now nor do we anticipate that they will in the future.

Summary of Comments and Recommendations

In the proposed rule published in the **Federal Register** on September 1, 2021 (86 FR 48953), we requested that all interested parties submit written comments on our proposal to delist the snail darter by November 1, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. All substantive information provided during the comment period has either been incorporated directly into this final rule or is addressed below.

During the comment period, we received comments from 31 individuals addressing the proposed rule, representing 30 public commenters and 1 partner review. Public comments are posted at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152. Nine public commenters supported the proposed rule with no additional analysis or revision requested. These comments are not further addressed. Public comments that did not provide substantive information that could be evaluated or incorporated are also not addressed further. Several public commenters provided substantive information that is addressed below.

Public Comments

(1) *Comment:* Several commenters expressed concern that the RRIP, which has been important in improving conditions in the TVA tailwaters, will not be continued if the snail darter is delisted. A few commenters also raised the concern of maintaining tailwater conditions in the event of TVA privatization.

Our Response: Much of the snail darter's recovery in the mainstem Tennessee River can likely be tied to the implementation of the RRIP, which is a suite of dam management practices that results in increased oxygen and more stable temperatures and flow rates in the tailwaters of TVA dams. However, as noted above in Summary of Factors Affecting the Species, the tailwaters inhabited by snail darters are also home to between 8 and 20 Federally listed mussel species that also require consistent flows and oxygen below TVA dams. The presence of these listed species requires that TVA continue to provide suitable conditions for them in the operation of their dams under the existing EIS and Operations and Management biological opinion. It is also very likely that their presence will necessitate continuation of the RRIP into the future if the biological opinion is revisited. Therefore, we do not expect the management practices at the dams to change based on the delisting of the snail darter; we expect that conditions maintained for other listed species will continue to be suitable for survival of snail darters. If management conditions are determined to endanger or threaten the long-term viability of the snail darter such that it meets the Act's definition of an endangered or threatened species, we can use our authorities under section 4 the Act, including the emergency listing authorities at section 4(b)(7), to relist the species as appropriate.

TVA is a public corporation within the Federal Government, but there have been considerations to convert it to a nongovernmental corporation. If TVA is privatized, the operation of the dams in the Tennessee Valley would no longer be directly managed by a Federal agency subject to the requirements of section 7 of the Act; however, the new corporation would still be regulated by the Federal Energy Regulatory Commission (FERC), which is also required to consult with the Service under section 7 of the Act to determine if their actions may affect any listed species. With the presence of federally listed mussels in the tailwaters, these consultations are unlikely to result in changes to operations that would negatively affect the tailwater conditions for the snail darter.

(2) *Comment:* Some commenters expressed concern that 5 years of post-delisting monitoring was not enough to ensure continued viability of the snail darter and recommended that resources for genetic monitoring are needed to ensure maintenance of genetic diversity.

Our Response: Following delisting, the Act requires the Service to work with States and other partners to prepare and implement a monitoring plan for the snail darter for at least 5

years following the delisting. We have developed a draft post-delisting monitoring plan for the snail darter in coordination with State and Federal agencies. The draft post-delisting monitoring plan is based on TVA's stream IBI monitoring and continuation of the reservoir trawl surveys for the snail darter. This plan will provide data on the continued resilience of the species or highlight unexpected declines and additional threats, should they arise. Five years of post-delisting monitoring of snail darters is sufficient because it will add to survey data collected over the past 10 years, which will allow us to look at the progress of the species over a longer time. Following 5 years of post-delisting monitoring, TVA will continue to monitor the health of the watersheds where snail darter is found by conducting IBI surveys. These surveys are expected to detect future declines of the species, should they occur. The draft post-delisting monitoring plan can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152.

We acknowledge that sustaining post-delisting monitoring efforts can be challenging and subject to competing priorities for available resources given that the Service cannot directly fund monitoring after a species has been delisted. Nonetheless, we designed a draft post-delisting monitoring plan that is realistic given limited resources. While maintaining genetic diversity is important for species conservation, we were able to make the decision that the snail darter no longer meets the Act's definition of an endangered or threatened species without available genetic information. Similarly, we will be able to assess the viability of the snail darter in the future without genetic monitoring to determine if the species should be relisted.

(3) *Comment:* A few commenters expressed concern that delisting the snail darter without complete population genetics for the species and without knowing the status of the newly discovered populations as distinct or descended from the translocated populations is premature.

Our Response: We are required to make our determinations based on the best available scientific and commercial data at the time the determination is made. A need for further research on a species is not necessarily relevant to the question of whether the species meets the Act's definition of an endangered or threatened species. The presence of resilient populations in 10 tributaries and 7 mainstem reservoirs across four physiographic regions provides sufficient evidence of high redundancy and representation for the species. This abundance and distribution of self-sustaining snail darter populations in both tributaries and mainstem reservoirs led us to conclude that the snail darter does not meet the Act's definition of an endangered or threatened species. Furthermore, delisting does not prevent continued research on the species.

While much of the success of the snail darter has come from the transplantation efforts into the Hiwassee and Holston Rivers, at the same time as those efforts, populations were found in Sewee Creek, South Chickamauga Creek, and in Nickajack Reservoir below Chickamauga Dam and near the mouth of the Sequatchie River. These discoveries indicate that the snail darter is wider spread than just the lower Little Tennessee River and that the recently discovered populations could have been established from multiple sources.

(4) *Comment:* Several commenters raised concerns with the long-term impacts of climate change on the snail darter, and one commenter cited a climate study of the upper Tennessee River Basin that we had not considered in the proposed rule (Jones et al. 2015).

Our Response: In the proposed rule (86 FR 48953; September 1, 2021), we considered multiple climate models for the Tennessee Valley, including the RCP 4.5 and RCP 8.5 models (Alder and Hostetler 2013, entire), interior Southeast models (Mulholland et al. 1997, entire; Ingram et al. 2013, entire), as well as a meta-analysis potential climate vulnerability of 700 species of rare and imperiled Appalachian flora and fauna (Appalachian LCC, 2017). While there was some variability in the exact predictions, these studies provided evidence for limited changes from the mean in both temperature and precipitation before 2050, but that there would be more extreme events, such as floods and droughts. However, due to the snail darter's larger stream habitats, it is more resilient to these changes than would be a headwater or shallow habitat species. We also concluded that the RRIP would likely further buffer the effects of climate change in the tailwaters.

The climate study from Jones et al. (2015) used past precipitation data for the upper Tennessee Valley to investigate trends between 1950 and 2009, with a more complete TVA dataset for 1990–2010. These data suggested a small but statistically significant decrease in annual precipitation for most of the subwatersheds investigated, seasonal variation with increased precipitation in the drier months and a decrease in the wetter months. However, using the same TVA dataset, 3 of the wettest years on record for the Tennessee Valley were in the last 5 years. While we anticipate the changes to precipitation from climate change to be noticeable in the foreseeable future, as mentioned above, the available evidence suggests that the snail darter will be resilient to these changes. We have incorporated information from Jones et al. (2015) and our analysis provided under Summary of Factors Affecting the Species, above.

Determination of the Snail Darter's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, see Regulatory and Analytical Framework, above.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have found that snail darter representation and redundancy has increased, with extant populations in 7 mainstem reservoirs of the Tennessee River and 10 tributaries in the Tennessee River watershed. Of the mainstem reservoirs, six populations showed multiple age classes, and for these six, we have observed direct evidence of reproduction in three populations, indicating moderate or high resilience. Collection efforts in two mainstem reservoirs, Wilson and Kentucky reservoirs, failed to find snail darters during our analysis period. Of the tributaries, nine populations demonstrated moderate to high resilience; one population is considered to have low resilience with no evidence of reproduction; three tributary populations (Citico Creek, Flint River, and Shoal Creek) lacked sufficient collections during our analysis period to consider them established. Additionally, the species is now known to be present in four physiographic

regions indicating increased representation, and the multiple resilient populations indicate an increase in redundancy since the species was reclassified to threatened in 1984. Because the snail darter has increased in representation and redundancy generally, and in particular with respect to numbers of resilient, self-sustaining populations, we expect this species to be able to sustain populations into the foreseeable future.

We have carefully assessed the best scientific and commercial information regarding the threats faced by the snail darter in developing this rule. Threats related to habitat loss and curtailment of range (Factor A) reported at the time of listing in 1975 (40 FR 47505; October 9, 1975) and when we downlisted the species to threatened status in 1984 (49 FR 27510; July 5, 1984) have been reduced in many locations. Available data indicate the species possesses greater resilience to the negative effects of dams than was determined at the time of listing. Further, beneficial dam operations (*i.e.,* RRIP) are expected to continue into the foreseeable future.

At the time of the downlisting rule (49 FR 27510; July 5, 1984), it was thought that the notoriety of the snail darter would result in an increase in illegal collection (Factor B); however, no such activities have been seen, and we do not consider this a threat to the current or future viability of the species. State water quality and wildlife laws provide some protections to the snail darter and its habitat, and its range overlaps with other federally protected aquatic animals (Factor D). In addition, we have evaluated potential effects of climate change (Factor E) and the evidence indicates that the species is resilient to the predicted levels of climate change. Thus, after assessing the best available information, we conclude that the snail darter is not in danger of extinction or likely to become so throughout all of its range within the foreseeable future.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the snail darter is not in danger of extinction or likely to become so throughout all of its range in the foreseeable future, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the snail darter, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered or threatened. For the snail darter, we considered whether the threats are geographically concentrated in any portion of the species' range on a biologically meaningful scale. We examined the following threats: habitat modification, curtailment of range, climate change, and illegal collection, including cumulative effects.

Threats related to habitat modification or curtailment of range affect snail darters throughout their range. With the implementation of TVA's RRIP, conditions around the large dams on the mainstem of the Tennessee River have improved. Our analysis of the species' resiliency (see *Analytical Framework,* above), which integrated information on demographics and threats, determined that six of the nine reservoir populations showed multiple age classes and direct evidence of reproduction in three of the reservoirs. These reservoirs with resilient populations are distributed across the snail darter's range and multiple geographic provinces. Of the 10 resilient tributary populations, 9 populations demonstrated moderate to high resiliency. In tributary watersheds such as the Ocoee and Sequatchie where water quality was impacted by localized mining threats, conditions have improved due in part to the cessation of mining and efforts to clean up the mine sites. In watersheds with higher levels of agriculture and urbanization such as the South Chickamauga Creek and Paint Rock River watersheds, conservation programs are in place to reduce the impact of these activities on the instream habitat used by the snail darter. Based on the distribution of resilient populations and the conservation efforts put in place, we have determined that there are not any portions of the range where the species may be endangered or threatened due to habitat modification or curtailment of the range.

We have reviewed other potential threats, including climate change, illegal collection, and cumulative effects, and concluded that there are not any portions of the range where the species is endangered or threatened due to these threats. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant; and, therefore, we did not apply the aspects of the definition of ''significant'' in the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that court decisions held were invalid.

Determination of Status

Our review of the best scientific and commercial data available indicates that the snail darter does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(d)(2), the snail darter has recovered. With this rule, we remove the snail darter from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This final rule revises 50 CFR 17.11(h) by removing the snail darter from the Federal List of Endangered and Threatened Wildlife. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act will no longer apply to the snail darter. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the snail darter. There is no critical habitat designated for this species, so there will be no effect to 50 CFR 17.95.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery.

Post-delisting monitoring refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of post-delisting monitoring is to ensure that the species' status does not deteriorate and that if a decline is detected, measures are taken to halt the decline so as to avoid the need to propose listing of the species again. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Overview

A post-delisting monitoring plan was developed in partnership with State and Federal agencies. The post-delisting monitoring has been designed to verify that the snail darter remains secure from risk of extinction after its removal from the Federal List of Endangered and Threatened Wildlife by detecting changes in population trends. The Act has a minimum post-delisting monitoring requirement of 5 years; however, if populations decline in abundance past the defined threshold in the post-delisting monitoring plan or a substantial new threat arises, post-delisting monitoring may be extended or modified, and the status of the species will be reevaluated.

Post-delisting monitoring will occur for 5 years with the first year of monitoring beginning after the publication of the final delisting rule. Post-delisting monitoring will be accomplished by using TVA's stream IBI monitoring to assess the resilience of tributary populations. Sites will be surveyed at least once within the 5-year period, though most will be surveyed two or three times. Reservoir trawl surveys will also be conducted, and all reservoirs will be surveyed at least three times during the post-delisting monitoring period to ensure the continued resilience and recruitment in the mainstem populations. A draft post-delisting monitoring plan for the species can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152. We will work closely with our partners to maintain the recovered status of the snail darter and ensure post-delisting monitoring is conducted and future management strategies are implemented (as necessary) to benefit the species.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are no Tribal lands associated with this final rule, and we did not receive any comments from any Tribes or Tribal members on the proposed rule (86 FR 48953; September 1, 2021).

References Cited

A complete list of all references cited in this final rule is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152, or upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

§ 17.11 [Amended]

■ 2. In § 17.11, at paragraph (h), amend the List of Endangered and Threatened Wildlife by removing the entry for ''Darter, snail'' under FISHES.

Martha Williams

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–21579 Filed 10–4–22; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 87, No. 192
Wednesday, October 5, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 234

[Regulation HH; Docket No. R–1782]

RIN No. 7100–AG40

Financial Market Utilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to amend the requirements relating to operational risk management in the Board's Regulation HH, which applies to certain financial market utilities that have been designated as systemically important (designated FMUs) by the Financial Stability Oversight Council (FSOC) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act). The proposal would update, refine, and add specificity to the operational risk management requirements in Regulation HH to reflect changes in the operational risk, technology, and regulatory landscapes in which designated FMUs operate since the Board last amended this regulation in 2014. The proposal would also adopt specific incident-notification requirements.

DATES: Comments must be received by December 5, 2022.

ADDRESSES: You may submit comments, identified by Docket No. R–1782 and RIN 7100–AG40, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FOR FURTHER INFORMATION CONTACT: Emily Caron, Assistant Director (202–452–5261) or Kathy Wang, Lead Financial Institution and Policy Analyst (202–872–4991), Division of Reserve Bank Operations and Payment Systems; or Cody Gaffney, Attorney (202–452–2674), Legal Division. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

A. Financial Market Utilities

A financial market utility (FMU) is a person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.[1] FMUs provide essential infrastructure to clear and settle payments and other financial transactions. Financial institutions, including banking organizations, participate in FMUs pursuant to a common set of rules and procedures, technical infrastructure, and risk-management framework.

If a systemically important FMU fails to perform as expected or fails to effectively measure, monitor, and manage its risks, it could pose significant risk to its participants and the financial system more broadly. For example, the inability of an FMU to complete settlement on time could create credit or liquidity problems for its participants or other FMUs. An FMU, therefore, should have an appropriate and robust risk-management framework, including appropriate policies and procedures to measure, monitor, and manage the range of risks that arise in or are borne by the FMU.

B. Title VIII of the Dodd-Frank Act

In recognition of the criticality of FMUs to the stability of the financial system, Title VIII of the Dodd-Frank Act (the Dodd-Frank Act or Act) established a framework for enhanced supervision of certain FMUs. Section 804 of the Dodd-Frank Act states that the FSOC shall designate those FMUs that it determines are, or are likely to become, systemically important. Such a designation by the FSOC makes an FMU subject to the supervisory framework set out in Title VIII of the Act.

Section 805(a)(1)(A) of the Act requires the Board to prescribe risk-management standards governing the operations related to payment, clearing, and settlement activities of designated FMUs.[2] As set out in section 805(b) of the Act, the applicable risk-management standards must (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.[3]

A designated FMU is subject to examination by the federal agency that

[1] 12 U.S.C. 5462(6).

[2] 12 U.S.C. 5464(a)(1). The Act directs the Board to ''tak[e] into consideration relevant international standards and existing prudential requirements'' when it promulgates these risk-management standards. *Id.* In addition, section 805(a)(2) of the Act grants the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) the authority to prescribe such risk-management standards for a designated FMU that is, respectively, a derivatives clearing organization (DCO) registered under section 5b of the Commodity Exchange Act, or a clearing agency registered under section 17A of the Securities Exchange Act of 1934. 12 U.S.C. 5464(a)(2).

[3] Further, under section 805(c), the risk-management standards may address areas such as (1) risk-management policies and procedures, (2) margin and collateral requirements, (3) participant or counterparty default policies, (4) the ability to complete timely clearing and settlement of financial transactions, (5) capital and financial resource requirements for designated FMUs, and (6) other areas that are necessary to achieve the objectives and principles described above. 12 U.S.C. 5464(c).

has primary jurisdiction over the FMU under federal banking, securities, or commodity futures laws (the ''Supervisory Agency'').[4] At present, the FSOC has designated eight FMUs as systemically important, and the Board is the Supervisory Agency for two of these designated FMUs—The Clearing House Payments Company, L.L.C. (on the basis of its role as operator of the Clearing House Interbank Payments System (CHIPS)) and CLS Bank International.[5] The risk-management standards in the Board's Regulation HH apply to Board-supervised designated FMUs.[6]

C. Regulation HH Risk-Management Standards for Designated FMUs

Section 234.3 of Regulation HH includes a set of 23 risk-management standards addressing governance, transparency, and the various risks that can arise in connection with a designated FMU's payment, clearing, and settlement activities, including legal, financial, and operational risks. These standards are based on and generally consistent with the *Principles for Financial Market Infrastructures* (PFMI).[7] The Regulation HH standards generally employ a flexible, principles-based approach. In several cases, however, the Board adopted specific minimum requirements that a designated FMU must meet in order to achieve the overall objective of a particular standard.

1. Operational Risk Management

Section 234.3(a)(17) of Regulation HH requires that a designated FMU manage its operational risks by establishing a robust operational risk-management framework that is approved by its board of directors.[8] In this regard, the designated FMU must (1) identify and mitigate its plausible sources of operational risk; (2) identify, monitor, and manage the operational risks it may pose to other FMUs and trade repositories; (3) ensure a high degree of security and operational reliability; (4) have adequate, scalable capacity to handle increasing stress volumes; (5) address potential and evolving vulnerabilities and threats; and (6) provide for rapid recovery and timely resumption of critical operations and fulfillment of obligations, including in the event of a wide-scale or major disruption. Section 234.3(a)(17) also contains several specific minimum requirements for business continuity planning, including a requirement for the designated FMU to have a business continuity plan that (1) incorporates the use of a secondary site at a location with a distinct risk profile from the primary site; (2) is designed to enable critical systems to recover and resume operations no later than two hours following disruptive events; (3) is designed to enable it to complete settlement by the end of the day of the disruption, even in case of extreme circumstances; and (4) is tested at least annually.

Although the term ''operational risk'' is not defined in current Regulation HH, when the Board proposed amendments to § 234.3(a)(17) in 2014, it described operational risk as the risk that deficiencies in information systems, internal processes, and personnel or disruptions from external events will result in the deterioration or breakdown of services provided by an FMU.[9] Consistent with an all-hazards view of managing operational risk, the Board believes operational risk could arise internally and externally. Internal sources of operational risk include the designated FMU's people, processes, and technology.[10] External sources of operational risk are those that fall outside the direct control of a designated FMU. For example, external sources of operational risk can include the designated FMU's participants and other entities, such as other FMUs, settlement banks, liquidity providers, and service providers, which may transmit threats through their various connections to the designated FMU. External sources of operational risk also include physical events, such as pandemics, natural disasters, and other destruction of property, as well as information security threats, such as cyberattacks and technology supply chain vulnerabilities. These internal and external sources of operational risk can manifest in different scenarios (including wide-scale or major disruptions) and can result in the reduction, deterioration, or breakdown of services that a designated FMU provides. A designated FMU must plan for these types of scenarios and test its systems, polices, procedures, and controls against them.

Importantly, the Board believes that effective operational risk-management, in combination with sound governance arrangements and effective management of general business risk (including the risk of losses from operational events), promotes operational resilience, which refers to the ability of an FMU to: (1) maintain essential operational capabilities under adverse conditions or stress, even if in a degraded or debilitated state; and (2) recover to effective operational capability in a time frame consistent with the provision of critical economic services.[11]

2. Evolution in the Operational Risk, Technology, and Regulatory Landscape

When the Board proposed the current Regulation HH risk-management standards in 2014, it recognized that there was ongoing work and discussion domestically and internationally on developing operational risk-management standards and planning for business continuity with respect to cybersecurity and responses to cyberattacks.[12] For example, in 2016, the Committee on Payments and Market Infrastructures (CPMI) and Technical Committee of the International Organization of Securities Commissions (IOSCO) published *Guidance on cyber resilience for financial market infrastructures* (Cyber Guidance), which supplements the PFMI and provides guidance on cyber resilience, including

[4] The Act's definition of ''Supervisory Agency'' is codified at 12 U.S.C. 5462(8). Section 807 of the Act authorizes the Supervisory Agencies to examine and take enforcement actions against the Supervisory Agencies' respective designated FMUs. The Act also describes certain authorities that the Board has with respect to designated FMUs for which it is not the Supervisory Agency, such as participation in examinations and recommendations on enforcement actions. 12 U.S.C. 5466.

[5] The SEC is the Supervisory Agency for The Depository Trust Company (DTC); Fixed Income Clearing Corporation (FICC); National Securities Clearing Corporation (NSCC); and The Options Clearing Corporation (OCC). The CFTC is the Supervisory Agency for the Chicago Mercantile Exchange, Inc. (CME); and ICE Clear Credit LLC (ICC). *See* U.S. Department of the Treasury, *Financial Market Utility Designations, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations.*

[6] The risk-management standards in Regulation HH would also apply to any designated FMU for which another Federal banking agency is the Supervisory Agency. At this time, there are no such designated FMUs.

[7] The PFMI, published by the Committee on Payment and Settlement Systems (now the Committee on Payments and Market Infrastructures) and the Technical Committee of the International Organization of Securities Commissions in April 2012, is widely recognized as the most relevant set of international risk-management standards for payment, clearing, and settlement systems.

[8] In this notice, § 234.4(a)(17) will be informally referred to as the ''operational risk management standard.''

[9] 79 FR 3665, 3683 (Jan. 22, 2014). The Board also incorporated this definition of ''operational risk'' into part I of the *Federal Reserve Policy on Payment System Risk* (PSR policy) in 2014, *see* 79 FR 2838, 2845 (Jan. 16, 2014), and into its ORSOM rating system in 2016, *see* 81 FR 58932, 58936 (Aug. 26, 2016). The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[10] Deficiencies in assessing and managing these sources of operational risk could cause errors or delays in processing, systems outages, insufficient capacity, fraud, data loss, and data leakage.

[11] *See* § 234.3(a)(2) and (a)(15).

[12] 79 FR 3665, 3683 (Jan. 22, 2014).

in the context of governance, the comprehensive management of risks, and operational risk management.[13] The Cyber Guidance has informed the Federal Reserve's supervision of designated FMUs.[14]

More recently, new challenges to operational risk management have emerged, including a global pandemic and severe weather events. In addition, certain types of cyberattacks that were once thought to be extreme or ''tail-risk'' events, like attacks on the supply chain and ransomware attacks, have become more prevalent. Technology solutions for the management of operational risk have also advanced since 2014, including the development of new technologies that have the potential to improve the resilience of designated FMUs. Finally, the legal and regulatory landscape in which designated FMUs operate has evolved to reflect these changes in the broader operational risk environment. For example, in November 2021, the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) adopted requirements on computer-security incident notifications for banking organizations and bank service providers (interagency notification rule).[15]

The evolution in the operational risk, technology, and regulatory landscape motivated the Board to conduct a full review of § 234.3(a)(17) to determine whether updates are necessary. Following this review, the Board believes that the outcomes required by the current operational risk management standard are generally still relevant and comprehensive. However, the Board has identified several areas where it believes updates to the rule are necessary.

II. Explanation of Proposed Rule

The Board is proposing to amend its operational risk management standard to reflect changes in the operational risk and threat landscape, as well as to incorporate developments in designated FMUs' operations and technology usage since the Board last amended Regulation HH in 2014. The proposal focuses on four areas: (1) review and testing, (2) incident management and notification, (3) business continuity management and planning, and (4) third-party risk management. The Board is also proposing several technical or clarifying amendments throughout §§ 234.2 and 234.3(a).[16]

The Board believes that the proposal continues to employ a flexible, principles-based approach in Regulation HH. Further, the Board believes the proposed amendments are largely consistent with existing measures that designated FMUs take to comply with Regulation HH and would create minimal added burden for the designated FMUs that are subject to Regulation HH. Accordingly, the Board is proposing that the proposed changes would become effective and require compliance 60 days from the date a final rule is published in the **Federal Register**.

The Board requests comment on all aspects of the proposed amendments, including the proposed effective and compliance date. In addition, the Board requests comment on the specific questions below. Where possible, commenters should provide both quantitative data and detailed analysis in their comments, particularly with respect to suggested alternatives to the proposed amendments. Commenters should also explain the rationale for their suggestions.

A. Review and Testing

Currently, § 234.3(a)(17)(i) requires designated FMUs to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls that are reviewed, audited, and tested periodically and after major changes. This general review and testing requirement applies broadly to the systems, policies, procedures, and controls that the designated FMU develops to mitigate sources of operational risk. For example, designated FMUs need to design and conduct appropriate tests on any policies or systems that they develop to ensure a high degree of security and operational reliability (as required by § 234.3(a)(17)(iii)). Similarly, a designated FMU needs to review and test any arrangements it sets up to achieve its planned business continuity recovery and resumption objectives (as required by § 234.3(a)(17)(vii)). This general review and testing requirement encompasses all reviews and tests the designated FMU performs with respect to such systems, policies, procedures, and controls, including those performed by the designated FMU's business lines, risk-management function, and audit function. It does not, however, prescribe specific types of tests that the designated FMU must conduct.

The Board is proposing amendments to the general review and testing requirement that would provide more specificity regarding its expectations. Proposed § 234.3(a)(17)(i) would emphasize that, just as the current general review and testing requirement applies broadly to the designated FMU's systems, policies, procedures, and controls, the proposal's requirements would also apply broadly to the systems, policies, procedures, and controls developed to mitigate the impact of the designated FMU's sources of operational risk.

1. Testing

Proposed § 234.3(a)(17)(i)(A)(1) would require a designated FMU to conduct tests of its systems, policies, procedures, and controls in accordance with a documented testing framework. The documented testing framework would need to address, at a minimum, the scope and frequency of such testing, who participates in such testing, and how the results of such testing will be reported. The testing framework would also need to account for any interdependencies between and among the systems, policies, procedures, and controls that are being tested.[17] A designated FMU could describe its testing framework in either a single document or in multiple documents, as appropriate, and could leverage relevant industry standards as it develops its testing framework.[18]

Proposed § 234.3(a)(17)(i)(A)(2) would require that the tests that a designated FMU conducts assess whether its systems, policies, procedures, or controls function as intended. Such tests could include capacity stress tests,

[13] CPMI–IOSCO, *Guidance on Cyber Resilience for Financial Market Infrastructures* (June 2016), *https://www.bis.org/cpmi/publ/d146.htm.*

[14] For example, when the Board finalized its ORSOM rating system for designated FMUs in 2016, it noted that the then-forthcoming Cyber Guidance would guide the Board's assessment of a designated FMU with respect to operational risk and cybersecurity policies and procedures. 81 FR 58932, 58934 (Aug. 26, 2016).

[15] 86 FR 66424 (Nov. 23, 2021). Congress also recently enacted the Cyber Incident Reporting for Critical Infrastructure Act of 2022, which requires covered entities to report significant cyber incidents to the Cybersecurity and Infrastructure Agency (''CISA''). *See* H.R. 2471, 117th Cong. (2022).

[16] In addition to the technical changes described below in section II.E, the Board is also proposing a technical change to the title of § 234.3. Currently, the section is erroneously titled ''Standards for payment systems,'' which is the legacy title from the initial Regulation HH risk-management standards published in 2012. The Board is proposing to replace ''payment systems'' with ''designated financial market utilities.''

[17] The proposal emphasizes the need for a designated FMU to take a comprehensive and risk-based approach to its operational risk management testing program, rather than focusing only on testing individual (or groups of) systems, policies, procedures, or controls (or components therein).

[18] For example, a designated FMU could leverage standards developed by the National Institute of Standards and Technology (NIST) and the Federal Financial Institutions Examination Council (FFIEC).

crisis management tabletop exercises, after-action reviews of incidents, business continuity tests both internally and with participants, vulnerability assessments, cyber scenario-based testing, penetration tests, and red team tests. Importantly, as described further below, a designated FMU would need to remediate any deficiencies identified during testing.

2. Review Scope

Proposed § 234.3(a)(17)(i)(B) would require a designated FMU to conduct a review of the design, implementation, and testing of relevant systems, policies, procedures, and controls after the designated FMU experiences any material operational incidents (which are discussed in section II.B.2 below). A designated FMU would also need to conduct such a review after significant changes to the environment in which it operates.[19]

The operational risk environment, including sources of risk and the nature or types of threats, can change unexpectedly and quickly. The proposal would ensure that designated FMUs review and make timely changes to their systems, policies, procedures, and controls following such changes. For example, the COVID–19 global pandemic highlighted new risks and challenges in the operational risk environment that warrant a review of relevant systems, policies, procedures, and controls.

3. Remediation of Identified Deficiencies

Finally, proposed § 234.3(a)(17)(i)(C) would require a designated FMU to remediate as soon as possible, following established governance processes, any deficiencies identified during tests and reviews. A designated FMU would need to assess whether such identified deficiencies require urgent remediation or are less urgent. In order to ensure that remediation measures are effective, it would be imperative for a designated FMU to perform subsequent validation to assess whether the remediation measures have addressed deficiencies without introducing new vulnerabilities.

A designated FMU should consult widely used and relevant industry standards to inform its understanding of how it should remediate any deficiencies. These industry standards, such as those published by the National Institute of Standards and Technology (NIST), the Federal Financial Institutions Examination Council (FFIEC), the Financial Services Sector Coordinating Council (FSSCC), and the International Organization for Standardization (ISO), are updated regularly and typically offer current and specific information on operational risk management practices.

4. Questions

With respect to proposed § 234.3(a)(17)(i)(A)–(C), the Board requests comment on the following specific questions:

1. Are the elements listed in § 234.3(a)(17)(i)(A)(1) the right elements to include by rule in the testing framework? What other elements should be addressed in a rule for a testing framework?

2. Are there challenges associated with implementation of these proposed requirements that the Board has not considered?

B. Incident Management and Notification

The Board is proposing to establish incident management and notification requirements in proposed § 234.3(a)(17)(vi).

1. Documented Incident Management Framework

Proposed § 234.3(a)(17)(vi) would require a designated FMU to establish a documented framework for incident management that provides for the prompt detection, analysis, and escalation of an incident; appropriate procedures for addressing an incident; and incorporation of lessons learned following an incident.[20]

In line with the all-hazards approach to operational risk management in this standard, the Board believes it is important for a designated FMU to be prepared to detect, address, and learn from any type of operational incident, regardless of the scenario or source of risk and the level of severity. Different types of incidents may require different levels of escalation internally or externally. Different types of incidents may also require different strategies for containment or eradication. For example, given the increasing prevalence of cyberattacks in the financial sector, a designated FMU should plan for an incident where a participant (or another type of connected entity), rather than the designated FMU itself, is experiencing a cyberattack. In this scenario, a designated FMU should be operationally prepared to take, and should have a legal basis to take, appropriate steps to mitigate the risk of contagion to itself or other participants, including but not limited to disconnecting the participant from the FMU if necessary. A designated FMU should also have processes and procedures to determine whether and when it would be appropriate to allow such a participant to reconnect to the FMU.

The proposal would require that a designated FMU's incident management framework include a plan for notification and communication of material operational incidents. This plan would, among other things, need to identify the entities that would be notified of operational incidents, including non-participants that could be affected by material operational incidents at the designated FMU and appropriate industry information-sharing fora. Proposed § 234.3(a)(17)(vi)(A) and (B), which are discussed further in sections II.B.2 and II.B.3, would set forth more detailed requirements for notification and communication of material incidents to ensure that the Board, the designated FMU's participants, and other relevant entities receive timely notifications.

2. Incident Notification to the Board

Proposed § 234.3(a)(17)(vi)(A) would require a designated FMU to notify the Board of operational incidents.

In November 2021, the Board, FDIC, and OCC jointly adopted the interagency notification rule for banking organizations and bank service providers.[21] The interagency notification rule scoped out designated FMUs, but the preamble to the interagency rule explained that the Board believes it is important for designated FMUs to inform Federal Reserve supervisors of operational disruptions on a timely basis.[22] The preamble to the interagency rule also noted that the Board would consider proposing amendments to Regulation

[19] The Board is also proposing a technical amendment to the requirement for the designated FMU to *review* its recovery and orderly wind-down plan under § 234.3(a)(3)(iii)(G) from ''following'' to ''after'' changes to the designated FMU's systems and environment. This conforms with the review requirement under proposed § 234.3(a)(17)(i)(B). The Board is also proposing a technical amendment to the requirement for the designated FMU to *update* its public disclosure under § 234.3(a)(23)(v) from ''following'' to ''to reflect'' changes to its systems and environment.

[20] These broad categories in incident management are generally consistent with those identified in the NIST computer-security incident handling guide. *See* NIST, *Computer Security Incident Handling Guide* (Special Publication 800–61, rev. 2), *https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-61r2.pdf.*

[21] 86 FR 66424 (Nov. 23, 2021).

[22] *Id.* at 66428 (noting that ''the Board has generally observed such practice by designated FMUs'').

HH in the future to formalize its incident-notification expectations and promote consistency between requirements applicable to designated FMUs that are supervised by the Board, the U.S. Securities and Exchange Commission (SEC), and the U.S. Commodity Futures Trading Commission (CFTC).[23]

Under proposed § 234.3(a)(17)(vi)(A), a designated FMU would be required to immediately notify the Board when it activates its business continuity plan or has a reasonable basis to conclude that (1) there is an actual or likely disruption, or material degradation, to any of its critical operations or services,[24] or to its ability to fulfill its obligations on time; or (2) there is unauthorized entry, or the potential for unauthorized entry, into the designated FMU's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services. Given the large volume and value of payment, clearing, and settlement activity processed by these entities and their interconnectedness with financial institutions and markets, material operational issues occurring at these designated FMUs could have financial stability implications. It is therefore critical for the Board to be notified immediately of these types of issues.

Importantly, in addition to actual disruptions, material degradation, or unauthorized entries, the proposal would also require immediate notification to the Board if the designated FMU has a reasonable basis to conclude that a disruption or material degradation is ''likely'' to occur or if there is ''potential'' for unauthorized entry into the designated FMU's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services. For example, a hurricane in the region where the designated FMU is located would not alone trigger notification; however, if the designated FMU concludes that such an event likely would disrupt or materially degrade its critical operations or services, then notification would be required. Similarly, in the case of potential unauthorized entries, not all identified vulnerabilities in its systems would require an immediate notification. However, if a designated FMU discovers or becomes aware of an unexploited vulnerability and determines that, if exploited, such vulnerability could result in a disruption or material degradation of its critical operations or service, the designated FMU would need to notify the Board immediately of such discovery.

The Board notes that ''immediately'' is meant to convey the urgency in notifying the Board of these material operational incidents; it does not mean ''instantaneous'' notification. The Board would expect to be notified of an operational incident once the designated FMU activates its business continuity plan or has a reasonable basis to conclude that an incident meets any of the criteria in proposed § 234.3(a)(17)(vi)(A)(1)–(2), even if the designated FMU does not yet have detailed information on the root cause or measures for containment or remediation. In these cases, the Board would expect to receive any available information that the designated FMU has at the time of notification.

The Board recognizes that the requirement for ''immediate'' notification to the Board would establish a heightened requirement for designated FMUs relative to banking organizations.[25] The proposed requirement is consistent with the systemic importance of designated FMUs and with existing SEC and CFTC incident notification requirements for the designated FMUs for which either the SEC or the CFTC is the Supervisory Agency.

3. Incident Notification to Participants and Other Relevant Entities

Proposed § 234.3(a)(17)(vi)(B) would require a designated FMU to establish criteria and processes, including the appropriate methods of communication, to provide for timely communication and responsible disclosure of material operational incidents to its participants or other relevant entities that have been identified in its notification and communication plan.

As proposed, this incident notification requirement would arise in two circumstances. First, a designated FMU would need to notify affected participants immediately in the event of actual disruptions or material degradation to its critical operations or services or to its ability to fulfill its obligations on time.[26] This immediate notification would ensure that affected participants (*e.g.,* participants encountering delays or errors) are aware that the issue originates from the designated FMU and not their own systems, in order to minimize confusion in the markets that the designated FMU serves and to allow participants to assess the impact to their operations. The term ''immediately'' is meant to convey the urgency in notifying the designated FMU's participants of disruptions or material degradation to its services; it does not mean ''instantaneous'' notification.

Second, a designated FMU would need to notify all participants and other relevant entities[27] in a timely and responsible manner of all other material operational incidents that require immediate notification to the Board. When designing this part of its communication plan, the Board would expect a designated FMU to consider the timing, content, recipients, and method of notification for a range of potential material operational incidents. In determining the scope of disclosure for a particular incident, the Board would expect a designated FMU to consider factors such as the risk-mitigation benefits arising from early warning to the financial system, the safety and soundness of the designated FMU, and any financial stability implications of disclosure. The Board recognizes that there might be risks to providing early disclosures to a broad audience regarding certain types of material operational issues. For example, if a designated FMU identifies a cyber vulnerability, the designated FMU might weigh the risk of disclosure as sufficiently great to delay notification or tailor the information provided to avoid exposing the designated FMU to a cyberattack.

[23] *Id.* SEC-supervised designated FMUs are subject to the SEC's Regulation SCI, which generally requires covered entities to notify the SEC ''immediately'' and their members or participants ''promptly'' of an SCI event. *See* 17 CFR 242.1000 (defining ''SCI Event'') and 242.1002 (imposing notification requirements related to SCI Events). Similarly, a CFTC-supervised designated FMU must notify the CFTC ''promptly'' of an ''exceptional event''. *See* 17 CFR 39.18(g). An ''exceptional event'' includes ''[a]ny hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or [a]ny activation of the designated FMU's business continuity and disaster recovery plan.'' *Id.*

[24] Critical operations and critical services are discussed below in section II.E.2.

[25] Under the interagency notification rule, a banking organization must notify its primary Federal regulator of certain computer-security incidents ''as soon as possible and no later than 36 hours.'' *See* 86 FR 66424, 66431–32 (discussing timing of notification to agencies).

[26] The requirement for ''immediate'' notification to affected participants would establish a heightened requirement for designated FMUs relative to those imposed on bank service providers in the interagency rule (which requires notification ''as soon as possible''), consistent the systemic importance of designated FMUs.

[27] As described in section II.B.1, above, a designated FMU would need to identify non-participant relevant entities in its plan for notification and communication of material operational incidents.

4. Examples of Material Operational Incidents

The following is a non-exhaustive list of operational incidents that the Board would consider to be material for purposes of the proposal. The Board would expect examples 1 and 2 to trigger immediate notifications to the Board and to the designated FMU's participants (and notification in a timely manner to other relevant entities, as applicable). The Board would expect examples 3–5 to trigger immediate notification to the Board, but believes the designated FMU should determine when they may trigger appropriately timely notifications and disclosure to participants and non-participant entities based on the criteria in its notification and communication plan.

(1) Large-scale distributed denial of service attacks that prevent the designated FMU from receiving its participants' payment instructions.

(2) A severe weather event or other natural disaster that causes significant damage to a designated FMU's production site and necessitates failover to another site during the business day.

(3) Malware on a designated FMU's network that poses an imminent threat to its critical operations or services (such as its core payment, clearing, or settlement processes, or collateral management processes), or that may require the designated FMU to disengage any compromised products or information systems that support the designated FMU's critical operations and services from internet-based network connections.

(4) A ransom malware attack that encrypts a critical system or backup data.

(5) A zero-day vulnerability on software that the designated FMU uses and has determined, if exploited, could lead to a disruption to or material degradation of its critical operations or services.

5. Questions

With respect to proposed § 234.3(a)(17)(vi), the Board requests comment on the following specific questions:

3. Do the requirements under proposed § 234.3(a)(17)(vi)(A) strike the proper balance between providing the Board with early warning and allowing designated FMUs sufficient time to notify the Board?

4. How should the criteria for determining whether operational incidents are material enough to warrant notification to the Board under proposed § 234.3(a)(17)(vi)(A) be modified, if at all?

5. Should the Board provide additional examples of material operational incidents?

6. How should designated FMUs provide notifications to the Board? For example, should the Board establish a centralized point of contact to receive notifications, or should designated FMUs notify their supervisory teams?

7. Is the proposed requirement on planning for timely notification and ''responsible disclosure'' of material operational incidents clear? Should a term other than ''responsible'' disclosure be used, given the intention of this proposed requirement, as explained in section II.B.3 above?

8. Are there challenges associated with implementing these proposed requirements that the Board has not considered?

C. Business Continuity Management and Planning

Current § 234.3(a)(17)(vi) (which, under the proposal, would be renumbered as § 234.3(a)(17)(vii)) requires that a designated FMU have business continuity management that provides for rapid recovery and timely resumption of its critical operations and fulfillment of its obligations, including in the event of a wide-scale or major disruption. Current § 234.3(a)(17)(vii) (which, under the proposal, would be renumbered as § 234.3(a)(17)(viii)) elaborates on certain requirements for a designated FMU's business continuity plan. Specifically, a business continuity plan must incorporate the use of a secondary site with a distinct risk profile from the primary site; be designed to enable critical systems to recover and resume operations no later than two hours following disruptive events; be designed to complete settlement by the end of the day of the disruption, even in extreme circumstances; and be tested at least annually.

The proposed amendments to current § 234.3(a)(17)(vii) would provide further detail in Regulation HH related to business continuity management and planning in order to promote robust risk management, reduce systemic risks, increase safety and soundness, and support the stability of the broader financial system.

1. Two Sites Providing for Sufficient Redundancy

The proposal would amend current § 234.3(a)(17)(vii)(A) to update terminology related to required backup sites. Currently, § 234.3(a)(17)(vii)(A) requires a designated FMU to have a secondary site that is located at a sufficient geographical distance from the primary site to have a distinct risk profile. The Board proposes to replace the references to ''secondary site'' and ''primary site'' with a general reference to ''two sites providing for sufficient redundancy supporting critical operations and services'' that are located at a sufficient geographical distance from ''each other'' to have a distinct risk profile (collectively, ''two sites with distinct risk profiles'').

This proposed amendment would accommodate data center arrangements with multiple production sites, rather than reflecting only the traditional arrangement where one site is considered ''primary'' and another site is treated distinctly as a backup site. The proposal would still require, however, a minimum of two locations that are sufficiently geographically distant from each other to have a distinct risk profile. Consistent with the Board's explanation when it adopted the current text of Regulation HH in 2014, the Board would consider sites to have ''distinct risk profiles'' if, for example, they are not located in areas that would be susceptible to the same severe weather event (*e.g.,* the same hurricane zone) or on the same earthquake fault line. These sites would likely also have distinct power and telecom providers and be operated by geographically dispersed staff.

2. Recovery and Resumption

Current § 234.3(a)(17)(vi) establishes a broad requirement for business continuity management. Current § 234.3(a)(17)(vii)(B)–(C) sets specific recovery and resumption objectives, requiring that a designated FMU's business continuity plan be designed to enable, respectively, recovery and resumption no later than two hours following disruptive events and completion of settlement by the end of the day of the disruption, even in case of extreme circumstances.

Under the proposal, these requirements would remain substantively unchanged.[28] Since the Board established these requirements in Regulation HH, the two-hour recovery time objective has been a particular area of focus during bilateral discussions with Board-supervised designated FMUs, as well as in broader domestic and international fora, specifically in the context of extreme cyber events. At the center of those discussions is the balance between timely recovery and resumption of critical operations and

[28] In addition to renumbering these sections as § 234.3(a)(17)(vii) and § 234.3(a)(17)(viii)(B)–(C), respectively, the Board is proposing a technical revision to § 234.3(a)(17)(vi), as described below in section II.E.2.

appropriate assurance that critical operations are restored to a trusted state. The Board continues to believe it is imperative to financial stability that a designated FMU be able to recover and resume its critical operations and services quickly after disruptive events, physical and cyber, and to complete settlement by the end of the day of the disruption. In related discussions with Board-supervised firms, and supported by provisions in the CPMI–IOSCO Cyber Guidance, Board staff has emphasized that recovery time objectives are necessary and critical targets around which plans, systems, and processes should be designed, enabling the firm to meet the objective.[29] However, these recovery time objectives should not be interpreted as a requirement for a designated FMU to resume operations in a compromised or otherwise untrusted state.

Threats to designated FMUs' operations continue to evolve, and the Board expects that a designated FMU's business continuity planning will be a dynamic process in which the designated FMU works to update the scenarios for which it plans on an ongoing basis to meet its recovery and resumption objectives. For many types of disruptive scenarios, technology and methods already exist to enable a designated FMU to recover and resume operations within two hours of the disruption. For example, if an earthquake damages a designated FMU's hardware and disrupts operations at one data center, the designated FMU can fail over to another location that is outside the earthquake radius.

The Board recognizes, however, that certain threats to designated FMUs' operations, as well as the technology to mitigate those threats, are continually evolving. In areas where threats and technology are still evolving, such as is the case for extreme cyberattacks (*e.g.,* where significant data loss or corruption occurs across its data centers), the Board recognizes that solutions are evolving with the threat environment and require a holistic approach that integrates protective, detective, and containment measures with response, recovery, and resumption solutions. The Board continues to expect that a designated FMU's business continuity planning will be a dynamic process in which the designated FMU works on an ongoing basis to update its plan to recover and resume operations to achieve its objectives in light of these evolving threats. Federal Reserve supervisors will also continue to work with designated FMUs through the supervisory process as designated FMUs identify reasonable approaches to prepare for and recover from such attacks. As development of adequate solutions for extreme cyberattacks continues, designated FMUs should also plan for contingency scenarios in which planned recovery and resumption objectives cannot be achieved. Planning for such scenarios would also be in accordance with national policies aimed at improving the cybersecurity posture of U.S. critical infrastructures.[30]

3. Reconnection After a Disruption to the Designated FMU's Critical Operations or Services

Proposed § 234.3(a)(17)(viii)(D) would require that the business continuity plan set out criteria and processes that address the reconnection of a designated FMU to its participants and other entities following a disruption to the designated FMU's critical operations or services. In this context, the Board would consider a disruption to a designated FMU's critical operations or services broadly as a form of ''disconnection'' to external parties such as the designated FMU's participants. This would include situations where a designated FMU deliberately takes itself offline such that participants cannot access its services (*e.g.,* if it experiences a major cyberattack that it needs to contain); it would also include situations where a designated FMU loses connection to its participants due to another type of external event (*e.g.,* if its production site loses power due to a severe weather event in its region).

The Board believes that the current requirements to plan for recovery and resumption include an implicit expectation that a designated FMU plan to reconnect to its participants and other relevant entities following a disruption. However, the Board is proposing to make this expectation explicit in order to emphasize the importance of *ex ante* criteria and processes addressing when and how a designated FMU will reconnect to its participants and other relevant entities. Given the current threat landscape and the ability for malware to spread, the Board believes it is crucial for a designated FMU to be prepared to balance the need for the designated FMU to quickly recover and resume its critical operations against the risk of contagion to its ecosystem should it resume operations in an unsafe state (*e.g.,* before an extremely harmful computer virus is fully contained or eradicated). For cyber incidents, it is particularly important for a designated FMU to be prepared to assure its participants, other connected entities, and regulator(s) that its remediation efforts are complete and that it has achieved a safe and trusted state.[31] A designated FMU should consider establishing a phased approach to reconnecting to the designated FMU's participants and other relevant entities, transaction testing with selected participants before full reconnection, and heightened monitoring for an appropriate period of time after reconnection.

4. Business Continuity Testing

The proposal would amend current § 234.3(a)(17)(vii)(D), which requires the business continuity plan to be ''tested at least annually,'' by separating it into two requirements (proposed § 234.3(a)(17)(viii)(E) and (F)).

Proposed § 234.3(a)(17)(viii)(E) would maintain the requirement for at least annual testing and clarify that this requirement covers the designated FMU's business continuity arrangements, including the people, processes, and technologies of the two sites with distinct risk profiles.[32] The required testing would need to demonstrate that the designated FMU is able to run live production at the two sites with distinct risk profiles; that its solutions for data recovery and data reconciliation enable it to meet its objectives to recover and resume operations two hours following a disruption and enable settlement by the end of the day of the disruption even in case of extreme circumstances including if there is data loss or corruption; and that it has geographically dispersed staff who can effectively run the operations and manage the business of the designated FMU.

The Board believes that a designated FMU must be able to demonstrate these particular capabilities in order verify that its business continuity

[29] For example, paragraph 6.2.2 of the Cyber Guidance notes that the objectives for resuming operations set goals for, ultimately, the sound functioning of the financial system, which should be planned for and tested against. It further notes the criticality of the recovery and resumption objectives under Principle 17, Key Consideration 6 of the PFMI, while also acknowledging that financial market infrastructures should exercise judgment in effecting resumption so that risks to itself or its ecosystem do not thereby escalate. For additional details, *see* CPMI–IOSCO, *Guidance on Cyber Resilience for Financial Market Infrastructures* (June 2016) at section 6, *https://www.bis.org/cpmi/publ/d146.htm* (''Response and Recovery'').

[30] *See, e.g.,* Presidential Policy Directive/PPD–21, *Critical Infrastructure Security and Resilience* (Feb. 12, 2013), *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

[31] A designated FMU might consider leveraging third-party experts to verify its remediation efforts.

[32] These tests would be subject to the general testing requirements described in section II.A.1 above.

arrangements will function as intended in achieving the recovery and resumption objectives in its business continuity plan. For example, given the importance of developing effective solutions for data recovery and reconciliation to address extreme cyber scenarios, the Board believes that designated FMUs should expressly be required to demonstrate that such solutions function as intended. Designated FMUs should also continue to plan for and test other scenarios, including wide-scale disruptions and major disruptions, from which they may need to recover.[33]

Proposed § 234.3(a)(17)(viii)(F) would require a designated FMU to review its business continuity plans, pursuant to the general review requirements described in section II.A.2 above, at least annually. The objectives of this review are twofold: (1) to incorporate lessons learned from actual and averted disruptions, and (2) to update the scenarios considered and assumptions built into the plan in order to ensure responsiveness to the evolving risk environment and incorporate new and evolving sources of operational risk (*e.g.,* extreme cyber events).

5. Questions

With respect to proposed § 234.3(a)(17)(viii), the Board requests comment on the following specific questions:

9. What are reasonable estimates of the costs and other challenges associated with proposed § 234.3(a)(17)(viii)?

10. Is the proposed formulation of ''two sites providing for sufficient redundancy supporting critical operations'' a clear and appropriate replacement for references to ''primary'' and ''secondary'' sites in the current rule?

11. Is the proposed requirement on addressing ''reconnection'' of the designated FMU after a disruption clear? Should a different term be used, given the intention of this proposed requirement, as explained in section II.C.3 above?

D. Third-Party Risk Management

The Board expects a designated FMU to conduct its activities—whether conducted directly by the designated FMU or through a service provider—in a safe and sound manner. The Board is proposing to add § 234.3(a)(17)(ix) regarding the management of risks associated with third-party relationships. Proposed § 234.3(a)(17)(ix) would require a designated FMU to have systems, policies, procedures, and controls in order to effectively identify, monitor, and manage risks associated with third-party relationships. Additionally, for any service that is performed for the designated FMU by a third party, these systems, policies, procedures, and controls would need to ensure that risks are identified, monitored, and managed to the same extent as if the designated FMU were performing the service itself. Importantly, the risks associated with third-party relationships would include both the risks stemming from the third party itself, as well as risks stemming from the supply chain.

Additionally, the Board is proposing to add ''third party'' as a defined term in Regulation HH. Specifically, proposed § 234.2(n) would define ''third party'' as ''any entity with which a designated FMU maintains a business arrangement, by contract or otherwise.''[34] For the purposes of proposed § 234.3(a)(17)(ix), the Board would consider third-party relationships to include vendor relationships for products such as for software and arrangements for any services that third parties perform for a designated FMU.[35] Services can include a wide variety of arrangements, from HVAC services that support the physical infrastructure of the designated FMU to technology platforms or financial risk management modeling that are essential to executing the designated FMU's payment, clearing, or settlement activities. The Board believes that where a designated FMU outsources the provision of services to a third party, the designated FMU retains the responsibility for meeting the risk-management standards in Regulation HH.

The Board is proposing these requirements because of the importance of ensuring that a designated FMU's activities do not become less safe when they are outsourced to third parties, and because of the importance of managing particular sources of operational risk associated with third-party relationships, including ''supply chain risk.''[36] Supply chain risk encompasses the potential for harm or compromise to a designated FMU that arises as a result of security risks from its third parties' subcontractors or suppliers, as well as the subcontractors' or suppliers' supply chains, and their products or services (including software that may be used by the third party or the designated FMU).[37]

Further, proposed § 234.3(a)(17)(ix) would require a designated FMU to regularly conduct risk assessments of its third-party relationships and establish, as appropriate, information-sharing arrangements with third parties. Proposed § 234.3(a)(17)(ix) would also require a designated FMU to include third parties in business continuity management and testing, as appropriate. The Board believes these specific measures are critical to a designated FMU's ability to effectively manage risks related to third-party relationships.

In general, the Board would expect a designated FMU to take a rigorous approach to identifying, monitoring, and managing risks associated with third-party relationships. To identify and assess the risks from third parties effectively, it would be prudent for the designated FMU to understand *ex ante* any risks associated with the third party, including details on the services or products the third party will provide and the security controls that the third party has in place. Before entering into a third-party relationship, the designated FMU should have a plan in place to address how it will effectively identify, monitor, and manage the relationship and its associated risks, in order to ensure that the designated FMU can continue to meet the risk-management requirements in Regulation HH. A designated FMU should conduct

[33] Scenarios-based testing allows a designated FMU to address an appropriately broad scope of scenarios, including simulation of extreme but plausible events, and should be designed to challenge the assumptions of response, resumption, and recovery practices, including governance arrangements and communication plans.

[34] Participants of designated FMUs would not be considered third parties. This definition is consistent with the definition of ''third-party relationship'' in the proposed interagency guidance on third-party relationships. *See* 86 FR 38182, 38186–87 (July 17, 2021). The Board views the requirements of proposed § 234.3(a)(17)(ix) as broadly consistent with the proposed interagency guidance. In examining designated FMUs under Regulation HH, Board examiners will continue to reference guidance on third-party risk management.

[35] Relatedly, the Board believes this proposal is consistent with section 807(b) of the Dodd-Frank Act, which provides each Supervisory Agency of a designated FMU with authority examine the provision of any service integral to the operation of the designated FMU for compliance with applicable law, rules, orders, and standards to the same extent as if the designated FMU were performing the service on its own premises. 12 U.S.C. 5466(b).

[36] The Board identified supply chain risk as a threat on which the Board is focused in its report on cybersecurity and financial system resilience. *See* Board of Governors of the Federal Reserve System, *Report to Congress: Cybersecurity and Financial System Resilience Report* (September 2021), *https://www.federalreserve.gov/publications/files/cybersecurity-report-202109.pdf.*

[37] This definition is consistent with NIST's definition of ''supply chain risk'' in the NIST computer-security incident handling guide. *See* NIST, *Computer Security Incident Handling Guide* (Special Publication 800–61, rev. 2), *https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-61r2.pdf.*

appropriate due diligence on third parties and should include, as appropriate, provisions in service contracts that establish information-sharing agreements based on the risk level of the third party. Information-sharing arrangements should include, where necessary, expectations related to when the designated FMU would be notified of material operational incidents at the third party.

To assess risk levels of third parties and monitor any changes in these risk levels that may affect a designated FMU and its ecosystem, the designated FMU should ensure that it regularly conducts risk assessments of its third-party relationships and that its information-sharing agreements include, where appropriate, information on the third party's information security controls and operational resilience objectives and capabilities. To manage risks posed by third parties, a designated FMU should adopt risk management practices that are commensurate with the level of risk posed by its third-party relationships, as identified through the risk assessments it conducts. For example, to manage supply chain risks, a designated FMU might require, in its contracts with certain third parties that are critical to its operations and services, mandatory approval from the designated FMU before the service provider may outsource any material elements of its service to another party.

In addition, a designated FMU should include third parties in its business continuity management and testing, as appropriate. A designated FMU should run scenario exercises with third parties to ensure that the designated FMU can effectively manage any instances in which a third party experiences an incident causing disruption or material degradation to the designated FMU's critical operations or services. For example, a designated FMU should be prepared to react—such as by switching to a contingency plan—to a cyberattack on one of its third parties that causes disruptions in that entity's ability to enable the designated FMU to fulfill its obligations on time.

1. Questions

With respect to proposed § 234.3(a)(17)(ix), the Board requests comment on the following specific questions:

12. Are there other risk-management measures that are essential to effective management of third-party relationship risks that the Board should consider setting as an explicit minimum requirement?

13. Is the proposed requirement on managing risks associated with ''third-party'' relationships clear? Should a different term be used, given the intention of this proposed requirement, as explained in section II.D above?

14. Are there challenges associated with implementation of this proposed requirement that the Board has not considered?

15. Should the proposed requirements related to third-party risk management be codified in § 234.3(a)(17) as proposed, or should the Board consider an alternative placement for these requirements in Regulation HH?

E. Technical Revisions

1. Definition of Operational Risk

Proposed § 234.2(h) would add ''operational risk'' as a defined term in Regulation HH. Under the proposal, this term is defined as ''the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by the designated financial market utility.''

The proposed definition of ''operational risk'' is consistent with the definition for operational risk in the PFMI and the Board's definition in part I of the *Federal Reserve Policy on Payment System Risk* (PSR policy), which sets out the Board's views, and related standards, regarding the management of risks in financial market infrastructures, including those operated by the Reserve Banks.[38] The Board also provided this definition of operational risk when it proposed the current operational risk-management standard in Regulation HH in 2014; however, the Board did not believe a defined term in the rule text was necessary at that time. For clarifying purposes, the Board is proposing to adopt ''operational risk'' as a defined term.

2. Definition of Critical Operations and Critical Services

Proposed § 234.2(d) would add ''critical operations'' and ''critical services'' as defined terms in Regulation HH, in order to streamline references to these terms. Under the proposal, these terms are defined as ''any operations or services that the designated financial market utility identifies under 12 CFR 234.3(a)(3)(iii)(A).'' Under § 234.3(a)(3)(iii)(A), a designated FMU must identify its critical operations and services related to payment, clearing, and settlement for purposes of developing its integrated plans for recovery and orderly wind-down.

The Board's proposed amendments to § 234.3(a)(17) related to review and testing, incident management and planning, and business continuity management planning, refer to a designated FMU's critical operations and/or services in multiple places. Amending Regulation HH to include definitions of ''critical operations'' and ''critical services'' would clarify that the critical operations or services that the designated FMU should consider under paragraph (a)(17) are the same set of critical operations and services that the designated FMU has identified under paragraph (a)(3). These technical revisions are not expected to result in changes to designated FMUs' business continuity management and planning.

3. Cross-Reference to ''Other Entities'' Identified in § 234.3(a)(3) on Comprehensive Management of Risk

Current § 234.3(a)(17)(ii) requires a designated FMU to identify, manage, and monitor the risks that its operations might pose to other ''financial market utilities and trade repositories, if any.'' The Board proposes to streamline and replace this reference with other ''relevant entities such as those referenced in paragraph (a)(3)(ii).'' The Board believes this requirement is consistent with the current requirement under subparagraph (a)(3)(ii) for the designated FMU to identify, measure, monitor, and manage the material risks that it poses to other entities, such as other FMUs, settlement banks, liquidity providers, and service providers, as a result of interdependencies. As a conforming revision, the Board is proposing to include ''trade repositories'' in the list of entities listed under paragraph (a)(3)(ii).[39]

4. Operational Capabilities To Ensure High Degree of Security and Operational Reliability

Current § 234.3(a)(17)(iii) requires a designated FMU to have ''policies and systems'' that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability. The Board expects a designated FMU to establish clearly defined objectives to ensure a high degree of security and operational reliability; to have systems designed to achieve these objectives; and to have policies, such as benchmarks, in place

[38] The Board revised concurrently the risk-management standards in Regulation HH and part I of the PSR policy based on the PFMI in 2014.

[39] Because of the differences in the definition for financial market infrastructure in the PFMI, which includes trade repositories, and the definition of FMU in the Dodd-Frank Act, which does not, the Board inadvertently excluded the reference to ''trade repositories'' in § 234.3(a)(3)(ii).

for the designated FMU to evaluate its systems' performance against these objectives.

A designated FMU is implicitly required to have the operational capability to achieve these objectives. The Board is proposing to make this requirement explicit by clarifying that a designated FMU must have ''operational capabilities''—in addition to policies and systems—that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability. This additional emphasis on having operational capabilities in addition to policies and systems is in line with proposed § 234.3(a)(17)(i)(A)(2), which emphasizes the need for a designated FMU to assess whether its relevant systems, policies, procedures, and controls *function as intended.*

5. Identify, Monitor, and Manage Potential and Evolving Vulnerabilities and Threats

Current § 234.3(a)(17)(v) requires a designated FMU to have comprehensive physical, information, and cyber security policies, procedures, and controls ''that address'' potential and evolving vulnerabilities and threats. The Board is proposing to replace the quoted text with ''that enable the designated financial market utility to identify, monitor, and manage'' potential and evolving vulnerabilities and threats. The Board believes this is a technical change that would clarify what it means to ''address'' potential and evolving vulnerabilities and threats.

6. Questions

With respect to the proposed set of technical amendments, the Board requests comment on the following specific question:

16. Would any of these proposed amendments effect a substantive change? If so, how?

III. Administrative Law Matters

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain (1) a description of the reasons 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 that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The Board is providing an IRFA with respect to the proposed rule. For the reasons described below, the Board believes that the proposal will not have a significant economic impact on a substantial number of small entities. The Board invites public comment on all aspects of its IRFA.

1. Reasons Action Is Being Considered

The Board is proposing to amend Regulation HH to update current standards related to operational risk management in light of developments in the operational risk, technology, and regulatory landscape in which designated FMUs operate. Further discussion of the rationale for the proposal is provided in section I.C, above.

2. Objectives of the Proposed Rule

As described in section I.B, above, section 805(a)(1)(A) of the Dodd-Frank Act requires the Board to prescribe risk-management standards, taking into consideration relevant international standards and existing prudential requirements, applicable to certain designated FMUs. Pursuant to this authority, the Board issued Regulation HH in 2012 and significantly revised Regulation HH in 2014. The Board is now proposing revisions to the current Regulation HH standards related to operational risk management. The Board's objective is to promote effective operational risk management practices at and the operational resilience of designated FMUs subject to Regulation HH, and as a result, advance safety and soundness and promote the stability of the U.S. financial system.

3. Description and Estimate of the Number of Small Entities

Regulation HH applies to designated FMUs other than derivatives clearing organizations registered with the CFTC and clearing agencies registered with the SEC. At present, the FSOC has designated eight FMUs as systemically important; two of these designated FMUs are subject to the Board's Regulation HH.

The Small Business Administration (SBA) has adopted size standards for determining whether a particular entity is considered a ''small entity'' for purposes of the RFA. The Board believes that the most appropriate SBA size standard to apply in determining whether a designated FMU is a small entity is the SBA size standard for financial transactions processing, reserve, and clearinghouse activities; under this standard, a designated FMU is considered a small entity if its annual receipts are less than $41.5 million.[40] When applying this SBA size standard, the Board includes the assets of all domestic and foreign affiliates in determining whether to classify a designated FMU as a small entity.[41]

After applying this SBA size standard, the Board believes that neither of the designated FMUs that are subject to Regulation HH are considered small entities.

4. Estimating Compliance Requirements

The proposal updates current standards in Regulation HH related to operational risk management in light of developments in the operational risk, technology, and regulatory landscape in which designated FMUs operate. The proposed revisions are discussed in detail in section II, above. In general, the proposed revisions would add specificity to the current operational risk management standards by codifying existing practices of designated FMUs into the regulation. Because the proposed revisions do not represent a significant change from existing practices of designated FMUs, the Board would not expect the proposed revisions to have a significant economic impact on those small entities.

[40] 13 CFR 121.201 (subsector 522320). Alternatively, the SBA size standards for (1) securities and commodities exchanges, (2) trust, fiduciary, and custody activities, or (3) international trade financing activities could also apply to certain designated FMUs; these size standards are currently the same as the size standard for financial transactions processing, reserve, and clearinghouse activities (*i.e.,* annual receipts of less than $41.5 million). *Id.* (subsectors 523210, 523991, and 522293).

[41] 13 CFR 121.103.

5. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any federal rules that may duplicate, overlap with, or conflict with the proposed rule.

6. Significant Alternatives Considered

The Board did not consider any significant alternatives to the proposed rule. The Board believes that updating the current Regulation HH standards related to operational risk management in light of developments in the operational risk, technology, and regulatory landscape in which designated FMUs operate is the best way to achieve the Board's objectives of promoting effective operational risk management practices at and the operational resilience of designated FMUs subject to Regulation HH, and as a result, advancing safety and soundness and promoting the stability of the U.S. financial system.

B. Competitive Impact Analysis

As a matter of policy, the Board conducts a competitive impact analysis in connection with any operational or legal changes that could have a substantial effect on payment system participants, even if competitive effects are not apparent on the face of the proposal. Pursuant to this policy, the Board assesses whether proposed changes ''would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services'' and whether any such adverse effect ''was due to legal differences or due to a dominant market position deriving from such legal differences.'' If, as a result of this analysis, the Board identifies an adverse effect on competition, the Board then assesses whether the associated benefits—such as improvements to payment system efficiency or integrity—can be achieved while minimizing the adverse effect on competition.[42]

Designated FMUs are subject to the supervisory framework established under Title VIII of the Dodd-Frank Act. This proposed rule revises current Regulation HH operational risk-management standards for certain designated FMUs. At least one designated FMU that is currently subject to Regulation HH competes with a similar service provided by the Reserve Banks.

Under the Federal Reserve Act, the Board has general supervisory authority over the Reserve Banks, including the Reserve Banks' provision of payment and settlement services. This general supervisory authority is more extensive in scope than the Board's authority over certain designated FMUs under Title VIII. In practice, Board oversight of the Reserve Banks goes beyond the typical supervisory framework for private-sector entities, including the framework provided by Title VIII. The Board is committed to applying risk-management standards to the Reserve Banks' Fedwire Funds Service and Fedwire Securities Service (collectively, Fedwire Services) that are at least as stringent as the Regulation HH standards that are applied to designated FMUs that provide similar services. This would continue to be the case if the proposed revisions to the operational risk management standards in Regulation HH are adopted. Specifically, the Fedwire Services are subject to in the risk-management standards in part I of the PSR policy, which (like those in Regulation HH) are based on the PFMI. The Board is be guided by its interpretation of the corresponding provisions of Regulation HH in its application of the risk management expectations in the PSR policy.[43] Therefore, the Board does not believe the proposed rule will have any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

C. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. For purposes of calculating burden under the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. Any collection of information addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)(ii)). The Board estimates there are fewer than 10 respondents and these respondents do not represent all or a substantial majority of the participants in payment, clearing, and settlement systems. Therefore, no collections of information under the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 234

Banks, banking, Credit, Electronic funds transfers, Financial market utilities, Securities.

For the reasons set forth in the preamble, the Board proposes to amend part 234 of chapter II of title 12 of the Code of Federal Regulations, as follows:

PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

■ 1. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 5461 *et seq.*

■ 2. Revise § 234.2 as follows:

§ 234.2 Definitions.

(a) *Backtest* means the *ex post* comparison of realized outcomes with margin model forecasts to analyze and monitor model performance and overall margin coverage.

(b) *Central counterparty* means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

(c) *Central securities depository* means an entity that provides securities accounts and central safekeeping services.

(d) *Critical operations* and *critical services* refer to any operations or services that the designated financial market utility identifies under 12 CFR 234.3(a)(3)(iii)(A).

(e) *Designated financial market utility* means a financial market utility that is currently designated by the Financial Stability Oversight Council under section 804 of the Dodd-Frank Act (*12 U.S.C. 5463*).

(f) *Financial market utility* has the same meaning as the term is defined in section 803(6) of the Dodd-Frank Act (*12 U.S.C. 5462(6)*).

(g) *Link* means, for purposes of § 234.3(a)(20), a set of contractual and operational arrangements between two or more central counterparties, central securities depositories, or securities settlement systems, or between one or more of these financial market utilities and one or more trade repositories, that connect them directly or indirectly, such as for the purposes of participating in settlement, cross margining, or expanding their services to additional instruments and participants.

(h) *Operational risk* means the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by the designated financial market utility.

(i) *Orderly wind-down* means the actions of a designated financial market utility to effect the permanent cessation, sale, or transfer of one or more of its

[42] *See Policies: The Federal Reserve in the Payments System* (issued 1984; revised 1990 and January 2001), *https://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm.*

[43] *See* section I.B.1 of the PSR policy.

critical operations or services in a manner that would not increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

(j) *Recovery* means, for purposes of § 234.3(a)(3) and (15), the actions of a designated financial market utility, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the designated financial market utility's viability as a going concern and to continue its provision of critical services.

(k) *Securities settlement system* means an entity that enables securities to be transferred and settled by book entry and allows transfers of securities free of or against payment.

(l) *Stress test* means the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, and changes in other valuation inputs and assumptions.

(m) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (*12 U.S.C. 5462(8)*).

(n) *Third party* means any entity with which a designated financial market utility maintains a business arrangement, by contract or otherwise.

(o) *Trade repository* means an entity that maintains a centralized electronic record of transaction data, such as a swap data repository or a security-based swap data repository.

■ 3. Amend § 234.3 by:

■ (a) Revising the section heading;

■ (b) Adding the words ''trade repositories,'' after the words ''such as other financial market utilities,'' in paragraph (a)(3)(ii);

■ (c) Removing the word ''following'' and adding in its place ''after'', in paragraph

■ (a)(3)(iii)(G);

■ (d) Revising paragraph (a)(17); and

■ (e) Removing the word ''following'' and adding in its place ''to reflect'', in paragraph (a)(23)(v).

The revisions read as follows:

§ 234.3 Standards for designated financial market utilities.

(a) * * *

(17) *Operational risk.* The designated financial market utility manages its operational risks by establishing a robust operational risk-management framework that is approved by the board of directors. In this regard, the designated financial market utility—

(i) Identifies the plausible sources of operational risk, both internal and external, and mitigates their impact through the use of appropriate systems, policies, procedures, and controls—including those specific systems, policies, procedures, or controls required pursuant to this paragraph (a)(17)—that are reviewed, audited, and tested periodically and after major changes such that—

(A) The designated financial market utility conducts tests—

(*1*) In accordance with a documented testing framework that addresses scope, frequency, participation, interdependencies, and reporting; and

(*2*) That assess whether the designated financial market utility's systems, policies, procedures, or controls function as intended;

(B) The designated financial market utility reviews the design, implementation, and testing of systems, policies, procedures, and controls, after material operational incidents, including the material operational incidents described in paragraph (a)(17)(vi)(A) of this section, or after significant changes to the environment in which the designated financial market utility operates; and

(C) The designated financial market utility remediates as soon as possible, following established governance processes, any deficiencies in systems, policies, procedures, or controls identified in the process of review or testing;

(ii) Identifies, monitors, and manages the risks its operations might pose to other relevant entities such as those referenced in paragraph (a)(3)(ii) of this section;

(iii) Has policies, systems, and operational capabilities that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability;

(iv) Has systems that have adequate, scalable capacity to handle increasing stress volumes and achieve the designated financial market utility's service-level objectives;

(v) Has comprehensive physical, information, and cyber security policies, procedures, and controls that enable the designated financial market utility to identify, monitor, and manage potential and evolving vulnerabilities and threats;

(vi) Has a documented framework for incident management that provides for the prompt detection, analysis, and escalation of an incident, appropriate procedures for addressing an incident, and incorporation of lessons learned following an incident. This framework includes a plan for notification and communication of material operational incidents to identified relevant entities that ensures the designated financial market utility—

(A) Immediately notifies the Board when the designated financial market utility activates its business continuity plan or has a reasonable basis to conclude that—

(*1*) There is an actual or likely disruption, or material degradation, to any critical operations or services, or to its ability to fulfill its obligations on time; or

(*2*) There is unauthorized entry, or the potential for unauthorized entry, into the designated financial market utility's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services;

(B) Establishes criteria and processes providing for timely communication and responsible disclosure of material operational incidents to the designated financial market utility's participants and other relevant entities, such that—

(*1*) Affected participants are notified immediately of actual disruptions or material degradation to any critical operations or services, or to the designated financial market utility's ability to fulfill its obligations on time; and

(*2*) All participants and other relevant entities, as identified in the designated financial market utility's plan for notification and communication, are notified in a timely manner of all other material operational incidents that require notification under paragraph (a)(17)(vi)(A) of this section;

(vii) Has business continuity management that provides for rapid recovery and timely resumption of critical operations and services and fulfillment of its obligations, including in the event of a wide-scale disruption or a major disruption;

(viii) Has a business continuity plan that—

(A) Incorporates the use of two sites providing for sufficient redundancy supporting critical operations that are located at a sufficient geographical distance from each other to have a distinct risk profile;

(B) Is designed to enable critical systems, including information technology systems, to recover and resume critical operations and services no later than two hours following disruptive events;

(C) Is designed to enable it to complete settlement by the end of the day of the disruption, even in case of extreme circumstances;

(D) Sets out criteria and processes that address the reconnection of the designated financial market utility to participants and other entities following a disruption to the designated financial market utility's critical operations or services;

(E) Provides for testing, pursuant to the requirements under paragraphs (a)(17)(i)(A) and (a)(17)(i)(C) of this section, at least annually, of the designated financial market utility's business continuity arrangements, including the people, processes, and technologies of the sites required under paragraph (a)(17)(viii)(A), such that it can demonstrate that—

(*1*) The designated financial market utility can run live production at the sites required under paragraph (a)(17)(viii)(A);

(*2*) The designated financial market utility's solutions for data recovery and data reconciliation enable it to meet its recovery and resumption objectives even in case of extreme circumstances, including in the event of data loss or data corruption; and

(*3*) The designated financial market utility has geographically dispersed staff who can effectively run the operations and manage the business of the designated financial market utility; and

(F) Is reviewed, pursuant to the requirements under paragraphs (a)(17)(i)(B) and (a)(17)(i)(C) of this section, at least annually, in order to—

(*1*) Incorporate lessons learned from actual and averted disruptions; and

(*2*) Update scenarios and assumptions in order to ensure responsiveness to the evolving risk environment and incorporate new and evolving sources of operational risk; and

(ix) Has systems, policies, procedures, and controls that effectively identify, monitor, and manage risks associated with third-party relationships, and that ensure that, for any service that is performed for the designated financial market utility by a third party, risks are identified, monitored, and managed to the same extent as if the designated financial market utility were performing the service itself. In this regard, the designated financial market utility—

(A) Regularly conducts risk assessments of third parties and establishes information-sharing arrangements, as appropriate, with third parties; and

(B) Includes third parties in business continuity management and testing, as appropriate.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–21222 Filed 10–4–22; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

[NCUA–2022–0138]

RIN 3133–AF43

Subordinated Debt

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to amend the Subordinated Debt rule (the Current Rule), which the Board finalized in December 2020 with an effective date of January 1, 2022. This proposal would make two changes related to the maturity of Subordinated Debt Notes (Notes) and Grandfathered Secondary Capital (GSC). Specifically, this proposal would replace the maximum maturity of Notes with a requirement that any credit union seeking to issue Notes with maturities longer than 20 years to demonstrate how such instruments would continue to be considered ''debt.'' This proposed rule would also extend the Regulatory Capital treatment of GSC to the later of 30 years from the date of issuance or January 1, 2052. This proposed extension would align the Regulatory Capital treatment of GSC with the maximum permissible maturity for any secondary capital issued to the United States Government or one of its subdivisions (U.S. Government), under an application approved before January 1, 2022. This proposed change would benefit eligible low-income credit unions (LICUs) that are either participating in the U.S. Department of the Treasury's (Treasury) Emergency Capital Investment Program (ECIP) or other programs administered by the U.S. Government. This change would also cohere the requirements in the Current Rule related to maturities and Regulatory Capital treatment of Notes and the Regulatory Capital treatment of GSC, while continuing to ensure that credit unions are operating within their statutory authority. The Board is making four other, minor modifications to the Current Rule to make it more user-friendly and flexible. Specifically, the Board is proposing to amend the definition of ''Qualified Counsel'' to clarify that such person(s) is not required to be licensed to practice law in every jurisdiction that may relate to an issuance. The Board is also proposing to amend two sections of the Current Rule to remove the ''statement of cash flow'' from the Pro Forma Financial Statements requirement and replace it with a requirement for ''cash flow projections.'' This change would better align the requirements of the Current Rule with the customary way credit unions develop Pro Forma Financial Statements and ''cash flow projections.'' Next, the Board is proposing to revise the section of the Current Rule on filing requirements and inspection of documents. This proposed changed would align this section of the Current Rule with current agency procedures. Finally, the Board is proposing to remove a parenthetical reference related to GSC that no longer counts as Regulatory Capital. This change would align the rule with recent changes made to the Call Report.

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF43, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket NCUA–2022–0138.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery or Courier:* Same as mail address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *https://www.regulations.gov,* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: *Policy:* Tom Fay, Director of Capital Markets, Office of Examination and Insurance. *Legal:* Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Tom Fay can be

reached at (703) 518–1179, and Justin Anderson can be reached at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Current Rule History

At its December 2020 meeting, the Board issued a final Subordinated Debt rule (the final rule).[1] The final rule permitted LICUs, complex credit unions, and new credit unions to issue Subordinated Debt for purposes of Regulatory Capital treatment.[2] Relevant to this proposed rule, the final rule included a provision providing that any secondary capital issued by LICUs under previously effective 12 CFR 701.34(b), outstanding as of the effective date of the final rule, would be considered GSC. The grandfathering provision of the final rule allowed LICUs with GSC to continue to be subject to the requirements of § 701.34(b), (c), and (d) (recodified in the Current Rule as § 702.414), rather than the requirements of the Current Rule. The final rule also included a provision stating that any issuances of secondary capital not completed by January 1, 2022, are, as of January 1, 2022, subject to the requirements of the Current Rule. Finally, the grandfathering provision in the final rule stated that GSC would continue to receive Regulatory Capital treatment for a period of 20 years from the effective date of the final rule.[3]

The final rule also contained a provision requiring Notes to have a minimum maturity of five years and a maximum maturity of 20 years.

After the NCUA issued the final rule, Congress passed the Consolidated Appropriations Act, 2021.[4] The Consolidated Appropriations Act, among other things, created the ECIP. Under the ECIP, Congress appropriated funds and directed Treasury to make investments in ''eligible institutions'' to support their efforts to ''provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities.''[5] The definition of ''eligible institutions'' includes federally insured credit unions that are minority depository institutions or community development financial institutions, provided such credit unions are not in troubled condition or subject to any formal enforcement actions related to unsafe or unsound lending practices.[6]

Under the terms developed by Treasury, investments in eligible credit unions are in the form of subordinated debt.[7] Treasury also aligned its investments in LICUs with the Federal Credit Union Act (the Act) and the NCUA's regulations, which allowed eligible LICUs to apply to the NCUA for secondary capital treatment for these investments. Relevant to this proposed rule, Treasury offered either 15- or 30-year maturity options for the investments.

Treasury opened the ECIP application process on March 4, 2021, with an application deadline of May 7, 2021. Treasury extended this deadline to September 1, 2021.

In October 2021, the NCUA issued a Letter to Credit Unions permitting LICUs participating in the ECIP to issue 30-year subordinated debt instruments.[8] This letter and its enclosure are discussed in more detail in subsequent sections of this document.

In December 2021, the Board issued a final amendment to the Current Rule permitting secondary capital to be considered GSC regardless of the actual issuance date, provided a secondary capital issuance was:

1. To the U.S. Government; and
2. Being conducted under a secondary capital application that was approved before January 1, 2022, under either § 701.34 of the NCUA's regulations for federal credit unions, or § 741.203 of the NCUA's regulations for federally insured, state-chartered credit unions.[9]

The final amendment and Letter to Credit Unions provided LICUs with additional flexibility to participate in the ECIP without being subject to the terms of the Current Rule.

B. Maturity and Regulatory Capital Treatment for GSC

The Current Rule restricts the maturity of Notes to a minimum of five years and a maximum of 20 years. In alignment with this maximum maturity, the Current Rule also terminates Regulatory Capital treatment for GSC after a period of 20 years beginning on the later of the date of issuance or January 1, 2022 (the effective date of the Current Rule).

As previously noted, under the ECIP, Treasury enabled LICUs to issue 30-year subordinated debt instruments. The Supervisory Letter enclosed to the Letter to Credit Unions discussed in section I of this document stated: ''federally insured, state-chartered LICUs typically issue secondary capital under similar borrowing authority. As such, the agency has taken certain precautions to ensure that issuances under the ECIP that receive secondary capital treatment are considered debt. Such precautions have included the agency prohibiting LICUs from receiving secondary capital treatment for issuances under the ECIP's 30-year option.''[10] The Supervisory Letter, however, went on to state that after further consideration, the agency was recalibrating its position and permitting LICUs to issue 30-year subordinated debt under the ECIP. In relevant portion, the Supervisory Letter stated:

> The agency has always recognized that no one term or factor of an ECIP instrument is dispositive in characterizing the nature of the instrument. As such, the agency is satisfied that the close collaboration between the NCUA and Treasury, the unique status of the ECIP, and the terms of the instrument have resulted in an instrument that complies with the Federal Credit Union Act, even with a 30-year term.[11]

While this change facilitated LICU participation in the ECIP, the agency recognizes that there is a distinct mismatch between a 30-year ECIP subordinated debt instrument and the 20-year maximum Regulatory Capital treatment of the same. To address this discrepancy, the NCUA conducted additional research into the issues of maximum Regulatory Capital treatment for GSC and the broader issue of a maximum maturity for new Subordinated Debt issuances.

[1] Throughout this document the Board uses the term ''final rule'' to refer to the final Subordinated Debt rule published in the **Federal Register** on February 23, 2021. The Board uses the term ''the Current Rule'' to refer to the current Subordinated Debt rule, as published in the Code of Federal Regulations, which includes the ''final rule'' and subsequent amendments.

[2] 86 FR 11060 (Feb. 23, 2021). Unless otherwise noted, capitalized terms in this preamble are defined in the Current Rule.

[3] *Id.*

[4] Consolidated Appropriations Act, 2021, Public Law 116–260 (H.R. 133), Dec. 27, 2020.

[5] *Id.* codified at 12 U.S.C. 4703a *et seq.*

[6] 12 U.S.C. 4703a(a)(2). Throughout this document, the Board only refers to LICUs, as those are the only eligible institutions that could receive secondary capital treatment for the ECIP investments.

[7] Throughout this document the term ''Subordinated Debt'' (initial caps) refers to issuances conducted under the Current Rule. Conversely, the term ''subordinated debt'' (lower-cased) refers to debt issuances conducted outside of the Current Rule, such as those under the ECIP.

[8] Letter to Credit Unions 21–CU–11, Emergency Capital Investment Program Participation and enclosed Supervisory Letter No. 21–02 (Oct. 20, 2021), *available at https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/emergency-capital-investment-program-participation.*

[9] 12 CFR 701.34 and 741.203; 86 FR 72807 (Dec. 23, 2021).

[10] Letter to Credit Unions 21–CU–11, Emergency Capital Investment Program Participation and enclosed Supervisory Letter No. 21–02 (Oct. 20, 2021).

[11] *Id.*

Both the maximum Regulatory Capital treatment for GSC and the maximum maturity for Notes are based on the statutory authority under which an FCU issues both instruments. Specifically, an FCU can only issue these instruments under its authority to borrow from any source. Therefore, the agency took precautions in the Current Rule to ensure that all issuances were in the form of debt. As noted in the January 2020 proposed Subordinated Debt rule, such precautions included imposing a maximum maturity of 20 years on Notes. The Board stated it was proposing such requirement ''to help ensure the Subordinated Debt is properly characterized as debt rather than equity. Generally, by its nature, debt has a stated maturity, whereas equity does not.'' [12]

With respect to GSC, the January 2020 proposed Subordinated Debt rule stated:

> The Board believes 20 years would provide a LICU sufficient time to replace Grandfathered Secondary Capital with Subordinated Debt if such LICU seeks continued Regulatory Capital benefits of Subordinated Debt. The Board believes it is important to strike a balance between transitioning issuers of Grandfathered Secondary Capital to this proposed rule and ensuring that instruments do not indefinitely remain as Grandfathered Secondary Capital.[13]

The 20-year Regulatory Capital treatment for GSC also aligned with the aforementioned maximum maturity for Notes issued under the Current Rule.

As the Board received feedback from the credit union industry on the mismatch between ECIP investment maturity and the Regulatory Capital treatment of the same, the NCUA conducted additional research into whether a 20-year maturity was necessary to ensure an FCU was operating squarely within its statutory authority when issuing Notes. While the Board continues to believe that a 20-year maturity is an appropriate demarcation point to ensure an FCU is issuing Subordinated Debt under its statutory authority, the agency's additional research has provided grounds to offer additional flexibility in this area. Based on this additional research, the Board is proposing the amendments discussed in the next section.

II. Proposed Changes

A. Regulatory Capital Treatment for GSC

The Board is proposing revisions to § 702.401(b) to permit GSC to receive Regulatory Capital treatment for a period of 30 years from the later of the date of issuance or January 1, 2022. This change would accomplish multiple goals. First, it would align the Regulatory Capital treatment with the maximum permissible maturity for secondary capital issued under the ECIP. The Board believes that this change is necessary to enable LICUs to receive the maximum benefit of the ECIP, as intended by Congress and effectuated by Treasury. Capital with longer maturities helps credit unions make more loans to underserved communities and improve the economic well-being in these areas. In addition, longer maturities will also allow participating credit unions to meet the statutory mission of the credit union system of meeting the credit and savings needs of members, particularly those people of modest means

Second, this proposed change would align the Regulatory Capital treatment across all GSC. This alignment provides additional flexibility to those LICUs with GSC that has a maturity longer than 20 years, while still striking a balance between transitioning issuers of GSC to the Current Rule and ensuring that instruments do not indefinitely remain as GSC. Further, as discussed in the next subsection, this alignment would also be consistent with the Board's proposed recalibration of the maturity requirement for Notes issued under the Current Rule.

B. Maximum Maturity of Notes

As noted earlier, the Current Rule contains the following requirement that Notes:

> Have, at the time of issuance, a fixed stated maturity of at least five years and not more than 20 years from issuance. The stated maturity of the Subordinated Debt Note may not reset and may not contain an option to extend the maturity[.] [14]

Additionally, the Board implemented this requirement to help an FCU issuing Subordinated Debt comply with its statutory authority.[15] As industry experts have correctly pointed out, the fixed stated maturity of an instrument is but one factor a court will evaluate in deciding whether an instrument is debt or equity. Courts have traditionally listed between 9 and 13 factors to be evaluated in determining if an instrument is debt or equity.[16]

During the formulation of the Current Rule, the agency engaged the services of an outside law firm that specializes in, among other things, taxation and securities law. Based on the research conducted by that firm and NCUA staff, the Board determined that 20 years was an advantageous demarcation point. NCUA staff and the Board are aware that courts have never set a strict limit on the length of a fixed stated maturity for purposes of a debt versus equity analysis. The agency recognizes that courts have, in some cases, found an instrument to be debt despite a maturity in excess of 50 years.[17] As discussed by legal scholars, as a general rule, the shorter the time between issuance of the debt instrument and the maturity or redemption date, the more the instrument appears to be debt.[18] Therefore, the Board continues to believe that 20 years is a sufficient demarcation point to balance flexibility with a rule firmly rooted in statutory authority. The Board, however, recognizes that a fixed stated maturity date is but one factor in a debt versus equity analysis, and, as noted by the U.S. Supreme Court: ''[t]here is no one characteristic . . . which can be said to be decisive in the determination of whether obligations are risk investments in the corporations or debt.'' [19] Considering the factors mentioned above, the Board is proposing to provide Issuing Credit Unions with additional flexibility on this requirement.

The Board is proposing to remove the maximum maturity limit of 20 years from § 702.404(a)(2) of the NCUA regulations.[20] In its place, the Board is proposing a requirement that a credit union must provide certain information in its application for preapproval under § 702.408 when applying to issue Notes with maturities longer than 20 years from the date of issuance. To demonstrate the issuance is debt, this proposal includes a new paragraph in

[12] 85 FR 13892 (Mar. 10, 2020).

[13] *Id.*

[14] *Id.* at 702.404(a)(2).

[15] While the Current Rule applies to both FCUs and FISCUs, authority for issuances by FISCUs is derived from state law, rather than the Act.

[16] *Hewlett-Packard Co.* v. *Comm'r,* 103 T.C.M. (CCH) 1736 (T.C. 2012), *aff'd sub nom. Hewlett-Packard Co.* v. *Comm'r,* 875 F.3d 494 (9th Cir. 2017). *A.R. Lantz Co.,* 424 F.2d at 1333 (citing *O.H. Kruse Grain & Milling* v. *Comm'r,* 279 F.2d 123, 125–126 (9th Cir. 1960), *aff'g* T.C. Memo.1959–110).

[17] ''Although 50 years might under some circumstances be considered as a long time for the principal of a debt to be outstanding, we must take into consideration the substantial nature of the * * * [taxpayer's] business, and the fact that it had been in corporate existence since [*62] 1897, or 61 years prior to the issuance of the debentures. Therefore, we think that a 50-year term in the present case is not unreasonable. * * * [*Monon R.R.* v. *Comm'r,* 55 T.C. at 359]. *PepsiCo Puerto Rico, Inc.* v. *Comm'r,* 104 T.C.M. (CCH) 322 (T.C. 2012).''

[18] ''Federal Income Taxation of Debt Instruments,'' David C. Garlock, Matthew S. Blum, Kyle H. Klein, Richard G. Larkins & Alan B. Munro (2011).

[19] *John Kelley Co.* v. *Comm'r,* 326 U.S. 521, 530 (1946).

[20] 12 CFR 702.404(a)(2).

§ 702.408(b) that requires a credit union applying to issue Notes with maturities longer than 20 years to submit, at the discretion of the Appropriate Supervision Office, one or more of the following:

1. A written legal opinion from a Qualified Counsel;

2. A written opinion from a licensed CPA; and

3. An analysis conducted by the credit union or independent third-party.

The Board believes this proposed structure would provide a credit union with additional flexibility to issue Notes with maturities longer than 20 years, provided the credit union can demonstrate that the Notes would be considered debt. The Board notes that the discretion on what information is necessary to satisfy this requirement would rest with the Appropriate Supervision Office, but this determination would be based on the overall structure of the issuance, including the fixed stated maturity and any other information requested by the Appropriate Supervision Office.[21]

As the entire Current Rule is designed to help ensure Notes would be considered debt, the Board does not anticipate that a legal or CPA opinion would be necessary for issuances that have fixed stated maturities that are not significantly longer than 20 years and do not contain any other features or terms that could be viewed as akin to an equity issuance. The Board notes, however, that every issuance is unique and, while unlikely, it is still possible a legal or CPA opinion may be necessary to fully ensure that a Note would be considered debt irrespective of the degree to which the maturity exceeds 20 years.

The Board believes this proposed structure is consistent with its original line of thinking with respect to debt versus equity and fixed stated maturities. However, this proposed structure more fully takes account of the other debt features of the Current Rule and the court decisions on debt versus equity.

C. Other Proposed Changes

1. Qualified Counsel

The Board is proposing to amend the definition of ''Qualified Counsel'' to clarify where such person(s) must be licensed to practice law. Current § 702.402 defines ''Qualified Counsel'' as ''an attorney licensed to practice law in the relevant jurisdiction(s) who has expertise in the areas of Federal and state securities laws and debt transactions similar to those described in this subpart.'' [22] The agency is aware that there is some confusion about the requirement that such person be ''licensed to practice law in the relevant jurisdiction(s).'' The Board's intention is not to mandate that ''Qualified Counsel'' be licensed to practice law in every jurisdiction that may be relevant to the issuance. Rather, this requirement is meant to specify that a ''Qualified Counsel'' is:

1. Licensed to practice law;

2. Has expertise in the areas of Federal and state securities laws and debt transactions similar to those described in the Current Rule; and

3. Qualified to provide sufficient advice to a credit union to comply with the requirement in § 702.406(f) that an Issuing Credit Union must comply with all applicable Federal and state securities laws.[23]

Therefore, the Board is proposing to remove ''in the relevant jurisdiction(s)'' from the definition of ''Qualified Counsel.'' This change would clarify the intention of this requirement and lessen the burden on credit unions, while not detracting from the expertise aspect of this requirement. The Board, however, reiterates that under § 702.406(f), an Issuing Credit union must comply with all Federal and state securities laws. An Issuing Credit Union, therefore, must ensure that it is able to ascertain, understand, and comply with all securities laws that apply to an issuance.

2. Statement of Cash Flows

The Board is proposing to amend §§ 702.408(b)(7) and 702.409(b)(2) to remove the statement of cash flow from the Pro Forma Financial Statements requirement and replace it with the requirement for cash flow projections.[24] Since the final rule was published in early 2021, NCUA has received several inquiries on the requirement of a pro forma statement of cash flow and whether a cash flow projection will suffice. The primary difference between a pro forma statement of cash flow and a cash flow projection is the former is a formal accounting statement and the latter is not. The Board believes a cash flow projection would suffice because the Appropriate Supervision Office needs cash flow projections, but not necessarily a Generally Accepted Accounting Principles accounting statement to evaluate the viability of an issuance. This change would also increase clarity in the Current Rule.

3. Filing Requirements and Inspection of Documents

The Board is proposing to amend the section of the Current Rule addressing the filing of documents and inspection of documents.[25] First, the Board is proposing to amend the title of this paragraph by removing the phrase ''inspection of documents.'' This phrase could be confusing, as this paragraph does not include a separate mechanism for inspecting documents outside of the Freedom of Information Act. As most Subordinated Debt documents submitted to the agency could be exempt from disclosure, the Board believes the Freedom of Information Act is the appropriate mechanism for requesting Subordinated Debt applications, Offering Documents, or other Subordinated Debt filings submitted by credit unions from the NCUA.

Second, the Board is proposing to replace the current requirement that a credit union submit all applicable documents via the NCUA's website with a requirement that a credit union make all submissions directly to the Appropriate Supervision Office. The Board notes that this proposed change is consistent with current practices, as well as how filings were handled for secondary capital. As most credit unions are already accustomed to this process, the Board believes this change would reduce confusion and forgo an additional step in the submission process.

4. Categorization of GSC That No Longer Counts as Regulatory Capital

The Board is proposing to revise § 702.414(c) by removing ''(''discounted secondary capital'' re-categorized as Subordinated Debt).'' This change would align this section to the current treatment of GSC on the Call Report, revised in the spring of 2022. In early 2022, the NCUA conducted a comprehensive review of the Call Report that led to the removal of the ''Subordinated Debt'' and ''Subordinated Debt included in Net Worth'' accounts and combined them into one ''Subordinated Debt'' line. This change makes the aforementioned parenthetical obsolete. The Board notes, however, that while the Call Report has changes related to the reporting of Subordinated Debt in the Liability section, credit unions will continue to count qualified and approved Subordinated Debt or GSC for Net

[21] *Id.* at § 702.408(b).

[22] *Id.* at § 702.402.

[23] *Id.* at § 702.406(f).

[24] *Id.* at §§ 702.408(b)(7) and 702.409(b)(2).

[25] *Id.* at § 702.408(l)(2).

Worth and Risk-Based Capital, when applicable.

III. Regulatory Procedures

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.[26] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection, unless it displays a valid Office of Management and Budget (OMB) control number. The current information collection requirements for Subordinated Debt are approved under OMB control number 3133–0207.

This rule proposes to remove the maximum maturity of Subordinated Debt Notes of 20 years and replace it with a requirement that a credit union seeking to issue Subordinated Debt Notes with maturities longer than 20 years, provide additional information as part of its application prescribed under new § 702.408(b)(15). This proposed reporting requirement is estimated to impact two credit unions applying to issue Subordinated Debt for an additional 20 hours per response, an increase of 40 burden hours annually. The following shows the total PRA estimate for the entire Subordinated Debt rule, inclusive of the additions referenced in the preceding sentence:

OMB Control Number: 3133–0207.

Title of information collection: Subordinated Debt, 12 CFR part 702, subpart D.

Estimated number respondents: 3,300.

Estimated number of responses per respondent: 1.12.

Estimated total annual responses: 3,705.

Estimated total annual burden hours per response: 1.54.

Estimated total annual burden hours: 5,702.

The NCUA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments to (1) *www.reginfo.gov/public/do/PRAMain* (find this particular information collection by selecting the Agency under ''Currently under Review'') and to (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, VA 22314–3428; Fax No. 703–519–8579; or email at *PRAComments@ncua.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

B. 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 Executive Order to adhere to fundamental federalism principles.

This proposed rule would 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. The proposed rule would affect only a small number of state-chartered LICUs with approved secondary capital applications for issuances to the U.S. Government or its subdivisions. This proposed rule would extend the Regulatory Capital treatment for GSC, eliminate the maximum maturity for Subordinated Debt, and make two minor clarifying changes. The proposed rule would not impose any new significant burden on credit unions and may ease some existing requirements. The NCUA has therefore determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

C. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would 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 (1998).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act[27] requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (defined as credit unions with under $100 million in assets).[28] This proposed rule would affect only a small number of LICUs with approved secondary capital applications for issuances to the U.S. Government or its subdivisions. This proposed rule would extend the Regulatory Capital treatment for GSC, eliminate the maximum maturity for Subordinated Debt, and make two minor clarifying changes. The proposed rule would not impose any new significant burden on credit unions and may ease some existing requirements. Accordingly, the NCUA certifies that this proposed rule would not have a significant economic impact on a substantial number of small credit unions.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the NCUA Board on September 22, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the NCUA Board proposes to amend 12 CFR part 702, as follows:

PART 702—CAPITAL ADEQUACY

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. Revise § 702.401(b) to read as follows:

§ 702.401 Purpose and scope.

* * * * *

(b) *Grandfathered Secondary Capital.* Any secondary capital defined as ''Grandfathered Secondary Capital,'' under § 702.402 of this part, is governed by § 702.414 of this part. Grandfathered Secondary Capital will no longer be treated as Regulatory Capital as of the later of 30 years from the date of issuance or January 1, 2052.

■ 3. In § 702.402, revise the definitions for ''Qualified Counsel'' and ''Regulatory Capital'' to read as follows:

[26] 44 U.S.C. 3507(d); 5 CFR part 1320.

[27] 5 U.S.C. 601 *et seq.*

[28] *Id.* at 603(a); NCUA Interpretive Ruling and Policy Statement 15–2.

§ 702.402 Definitions.

* * * * *

Qualified Counsel means an attorney licensed to practice law who has expertise in the areas of Federal and state securities laws and debt transactions similar to those described in this subpart.

Regulatory Capital means:

(1) With respect to an Issuing Credit Union that is a LICU and not a complex credit union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 30 years from the date of issuance or January 1, 2052, Grandfathered Secondary Capital that is included in the credit union's net worth ratio;

(2) With respect to an Issuing Credit Union that is a complex credit union and not a LICU, the aggregate outstanding principal amount of Subordinated Debt that is included in the credit union's RBC Ratio, if applicable;

(3) With respect to an Issuing Credit Union that is both a LICU and a complex credit union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 30 years from the date of issuance or January 1, 2052, Grandfathered Secondary Capital that is included in its net worth ratio and in its RBC Ratio, if applicable; and

(4) With respect to a new credit union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 30 years from the date of issuance or January 1, 2052, Grandfathered Secondary Capital that is considered pursuant to § 702.207.

* * * * *

■ 4. In § 702.404, revise the section heading and paragraph (a)(2) to read as follows:

§ 702.404 Requirements of the Subordinated Debt Note.

(a) * * *

(1) * * *

(2) Have, at the time of issuance, a fixed stated maturity of at least five years. The stated maturity of the Subordinated Debt Note may not reset and may not contain an option to extend the maturity. A credit union seeking to issue Subordinated Debt Notes with maturities longer than 20 years from the date of issuance must provide the information required in § 702.408(b)(14) as part of its application for preapproval to issue Subordinated Debt;

* * * * *

■ 5. In § 702.408:

■ a. Revise paragraph (b)(7);

■ b. Redesignate paragraphs (b)(14) and (15) as paragraphs (b)(15) and (16);

■ c. Add new paragraph (b)(14); and

■ d. Revise paragraph (l)(1).

The revisions and addition read as follows:

§ 702.408 Preapproval to Issue Subordinated Debt.

* * * * *

(b) * * *

* * * * *

(7) Pro Forma Financial Statements (balance sheet and income statement) and cash flow projections, including any off-balance sheet items, covering at least two years. Analytical support for key assumptions and key assumption changes must be included in the application. Key assumptions include, but are not limited to, interest rate, liquidity, and credit loss scenarios;

* * * * *

(14) In the case of a credit union applying to issue Subordinated Debt Notes with maturities longer than 20 years, an analysis demonstrating that the proposed Subordinated Debt Notes would be properly characterized as debt in accordance with U.S. GAAP. The Appropriate Supervision Office may require that such analysis include one or more of the following:

(i) A written legal opinion from a Qualified Counsel;

(ii) A written opinion from a licensed CPA; and

(iii) An analysis conducted by the credit union or independent third party;

* * * * *

(l) *Filing requirements.*

(1) Except as otherwise provided in this section, all initial applications, Offering Documents, amendments, notices, or other documents must be filed electronically with the Appropriate Supervision Office. Documents may be signed electronically using the signature provision in 17 CFR 230.402 (Rule 402 under the Securities Act of 1933, as amended).

* * * * *

■ 6. In § 702.409, revise paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) Pro Forma Financial Statements (balance sheet and income statement) and cash flow projections, including any off-balance sheet items, covering at least two years. Analytical support for key assumptions and key assumption changes must be included in the application. Key assumptions include, but are not limited to, interest rate, liquidity, and credit loss scenarios.

* * * * *

§ 702.414 [Amended]

■ 7. In § 702.414(c) introductory text, remove the phrase ''(''discounted secondary capital'' re-categorized as Subordinated Debt)''.

[FR Doc. 2022–20926 Filed 10–4–22; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AB22

Enterprise Duty To Serve Underserved Markets Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is proposing to amend its Enterprise Duty to Serve Underserved Markets regulation to add a definition of ''colonia census tract,'' which would serve as a census tract-based proxy for a ''colonia,'' and to amend the definition of ''high-needs rural region'' in the regulation by substituting ''colonia census tract'' for ''colonia.'' The proposed rule would also revise the definition of ''rural area'' in the regulation to include all colonia census tracts regardless of their location. These changes would make activities by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in all colonia census tracts eligible for Duty to Serve credit. The intent of the changes is to facilitate the Enterprises' ability to operationalize their Duty to Serve activities and thereby help increase liquidity in these underserved communities.

DATES: FHFA will accept written comments on the proposed rule on or before December 5, 2022.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB22, by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB22.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones,

General Counsel, Attention: Comments/RIN 2590–AB22, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street, SW entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AB22, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For time sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Office of Housing and Community Investment, 202–649–3157, *ted.wartell@fhfa.gov;* Marcea Barringer, Supervisory Policy Analyst, Office of Housing and Community Investment, 202–649–3275, *marcea.barringer@fhfa.gov;* or Dinah Knight, Assistant General Counsel, Office of General Counsel, (202) 748–7801, *dinah.knight@fhfa.gov,* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Comments and Access

FHFA invites comments on all aspects of the proposed rule, in addition to specific requests for comments provided throughout, and will take all comments into consideration before issuing a final rule. Commenters do not need to answer each question. Copies of all comments will be posted without change and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

A. Statutory Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) provides generally that the Enterprises ''have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate income families.[1] Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.[2] Specifically, the Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.[3] In addition, section 1335(d)(1) of the Safety and Soundness Act requires FHFA to establish, by regulation, a method for evaluating and rating the Enterprises' compliance with the Duty to Serve underserved markets.[4]

B. Duty To Serve Regulation and Policy Guidance

FHFA's regulation on the Enterprise Duty to Serve Underserved Markets implements the Duty to Serve statutory requirements in the Safety and Soundness Act.[5] Under the regulation, each Enterprise is required to prepare an Underserved Markets Plan (Plan) describing the specific activities and objectives it will undertake to fulfill its Duty to Serve in each underserved market over a three-year period.[6] The regulation identifies specific types of activities that are eligible to receive Duty to Serve credit and that an Enterprise may include in its Plan.[7] The regulation also provides a general framework for FHFA to annually evaluate and rate the Enterprises' compliance with their Duty to Serve.[8]

In addition to the regulation, FHFA has released, and periodically updates, guidance addressing implementation and operational issues the Enterprises have encountered while developing and executing their Plans, referred to as the Evaluation Guidance.[9] The Evaluation Guidance describes: the procedures for preparing the Plans; the standards for FHFA issuance of Non-Objections to the Plans; and the process by which and standards for FHFA's annual evaluation of each Enterprise's compliance with its Plan and FHFA's rating of the extent of such compliance and its impact on each underserved market.[10]

Under the regulation, activities eligible for Duty to Serve credit and for inclusion in the Plans for each underserved market are grouped into three categories—Statutory Activities (which are specified in the Safety and Soundness Act), Regulatory Activities (which are specified in the regulation), and Additional Activities (which are proposed by an Enterprise and subject to FHFA determination of whether they are eligible to receive Duty to Serve credit). While no single Statutory or Regulatory Activity is mandatory, an Enterprise is required to consider a minimum number of Statutory or Regulatory Activities for each underserved market, as designated by FHFA in the Evaluation Guidance.[11]

C. The Rural Housing Market Under the Duty To Serve Regulation

Under the regulation, activities eligible for Duty to Serve credit for the rural housing market must be in a ''rural area.'' Section 1282.1 of the regulation defines ''rural area'' as: (i) a census tract outside of a metropolitan statistical area (MSA) as designated by the Office of Management and Budget (OMB); or (ii) a census tract in an MSA but outside of the MSA's Urbanized Areas as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1 and outside of tracts with a housing density of more than 64 housing units per square mile in USDA's RUCA Code #2.

[1] *See* 12 U.S.C. 4501(7).

[2] *See* 12 U.S.C. 4565.

[3] *See* 12 U.S.C. 4565(a). The terms ''very low-income,'' ''low-income,'' and ''moderate-income'' are defined in 12 U.S.C. 4502.

[4] *See* 12 U.S.C. 4565(d)(1).

[5] *See* 12 CFR part 1282, subpart C; 81 FR 96242 (Dec. 29, 2016).

[6] *See* 12 CFR 1282.32(a), (b).

[7] *See* 12 CFR 1282.33(c) for eligible activities in the manufactured housing market; 12 CFR 1282.34(c), (d) for eligible activities in the affordable housing preservation market; and 12 CFR 1282.35(c) for eligible activities in the rural housing market. An Enterprise may include in its Plan other activities (referred to as ''Additional Activities'') to serve eligible households, subject to FHFA determination of whether the Additional Activities are eligible to receive Duty to Serve credit.

[8] *See* 12 CFR 1282.36.

[9] *See* 12 CFR 1282.36(d).

[10] The current Duty to Serve Evaluation Guidance is available at: *https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Evaluation-Guidance_2022-5.pdf.*

[11] *See* 12 CFR 1282.32(d)(1).

The regulation identifies certain regions within rural areas that have particularly acute financing needs for affordable housing for low-income households as ''high-needs rural regions,'' and designates Enterprise support for these high-needs rural regions as a Regulatory Activity.[12] Specifically, § 1282.1(b) of the regulation defines a ''high-needs rural region'' as any of the following regions located in a rural area: (i) Middle Appalachia; (ii) the Lower Mississippi Delta; (iii) a colonia; or (iv) a tract located in a persistent poverty county and not included in Middle Appalachia, the Lower Mississippi Delta, or a colonia. FHFA stated in the preamble to its 2016 Duty to Serve final rule that it selected the rural regions identified in the definition because they are characterized by a high concentration of poverty and substandard housing conditions.[13] The preamble also acknowledged comments received on FHFA's 2015 Duty to Serve proposed rule from policy advocacy organizations, nonprofit organizations, government entities, and a trade association supporting the inclusion of the proposed high-needs rural regions as a Regulatory Activity, stating that there are extensive challenges to serving these regions and populations, and that these regions and populations have historically lacked necessary investment.[14] Additionally, the preamble referred to discussions with both Enterprises highlighting that certain regions and populations, such as colonias, were unique and would likely take significant time and resources in order to make meaningful improvement in housing conditions in such communities.[15]

FHFA originally proposed a definition of ''colonia'' in its 2015 Duty to Serve proposed rule that would have included a requirement that the community be located in a U.S. census tract with some portion of the tract within 150 miles of the U.S.-Mexico border.[16] After analysis of existing federal, state, and local definitions of ''colonia'' and in response to commenters' concerns that the proposed definition was too narrow in scope, FHFA adopted a broader definition of ''colonia'' in the 2016 final rule with the intent to encourage Enterprise support for colonias.[17] Accordingly, § 1282.1 of the regulation defines a ''colonia'' as an identifiable community that meets the definition of a colonia under a federal, State, tribal, or local program. However, FHFA noted in the preamble to the 2016 final rule that this broader definition of ''colonia'' could present challenges for the Enterprises in their efforts to target colonias.[18] The preamble specifically noted that by adopting the broader definition of ''colonia,'' the Agency would be unable, at the time the final rule was issued, to provide the Enterprises with a data file listing all of the census tracts containing colonias eligible for Duty to Serve credit, as it planned to do for the other high-needs rural regions.[19] In an effort to address the data challenges associated with specifically identifying the census tracts that contain a colonia, the preamble encouraged the Enterprises to collect and share granular data with researchers, lenders, and housing providers.[20]

D. Challenges Associated With Targeting Colonias

As previously noted, each Enterprise is required to develop and implement a three-year Plan describing the specific activities and objectives it plans to undertake to fulfill its Duty to Serve in each underserved market. Under their 2018–2021 Plans,[21] both Enterprises engaged in activities designed to increase access to mortgage credit by households residing in high-needs rural regions, including colonias. Despite these efforts, the Enterprises have had little success acquiring loans originated in colonias. To date, Enterprise purchases of single-family and multifamily loans originated in colonias that received Duty to Serve credit are low relative to their loan purchases from other high-needs rural regions that received Duty to Serve credit. Figure 1 below shows that the Enterprises reported purchasing 123 single-family loans originated in colonias during the period 2018 through 2021 that received Duty to Serve credit. During the same period, the Enterprises reported purchasing 62,011 single-family loans originated in rural tracts in Middle Appalachia, 41,174 single-family loans originated in rural tracts in the Lower Mississippi Delta, and 28,752 single-family loans originated in persistent poverty counties not already included in one of the other high-needs rural regions that received Duty to Serve credit.

FIGURE 1—ENTERPRISE SINGLE-FAMILY LOAN PURCHASES IN HIGH-NEEDS RURAL REGIONS

High-needs rural region[22]	Enterprise single-Family loan purchases in high-needs rural regions that received duty to serve credit				
	2018	2019	2020	2021	Total, 2018–2021
Rural Tract in Middle Appalachia	9,471	10,280	18,339	23,921	62,011
Rural Tract in Lower Mississippi Delta	6,783	6,794	11,887	15,710	41,174
Colonia	24	26	29	44	123
Persistent Poverty County Only[23]	4,624	4,842	8,044	11,242	28,752

Source: FHFA Analysis of Enterprise Data.

[12] *See* 12 CFR 1282.35(c).

[13] 81 FR 96242, 96274 (Dec. 29, 2016).

[14] *Id.*

[15] *Id.* Families in colonias have been found to lack safe, sanitary, and sound housing and basic services such as potable water, adequate sewage systems, drainage, utilities, and paved roads.'' *See https://www.tdhca.state.tx.us/oci/background.htm.*

[16] 80 FR 79181, 79216 (Dec. 18, 2015).

[17] 81 FR 96242, 96276 (Dec. 29, 2016).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Due to the coronavirus pandemic, the initial three-year Plan cycle was extended by one year, on an exception basis.

[22] The information presented in Figure 1 regarding single-family loan purchases does not take into account the differences in the geographic size or population of the high-needs rural regions.

[23] Colonias and rural tracts in Middle Appalachia and the Lower Mississippi Delta may also be located in persistent poverty counties. If a single-family loan purchase is in a persistent poverty county *and* another high-needs rural region, it is counted under the other high-needs rural region. Single-family loan purchases counted under a persistent poverty county only are those not located in any of the other high-needs rural regions.

Figure 2 below shows that the Enterprises reported no purchases of multifamily loans originated in colonias that received Duty to Serve credit during the period 2018 through 2021. Figure 2 also shows that the Enterprises reported purchasing 43 multifamily loans originated in rural tracts in Middle Appalachia, 65 multifamily loans originated in rural tracts in the Lower Mississippi Delta, and 91 multifamily loans originated in persistent poverty counties not already included in one of the other high-needs rural regions that received Duty to Serve credit.

FIGURE 2—ENTERPRISE MULTIFAMILY LOAN PURCHASES IN HIGH-NEEDS RURAL REGIONS

High-needs rural region [24]	Enterprise multifamily loan purchases in high-needs rural regions that received duty to serve credit				
	2018	2019	2020	2021	Total, 2018–2021
Rural Tract in Middle Appalachia	7	10	14	12	43
Rural Tract in Lower Mississippi Delta	8	22	23	11	64
Colonia	0	0	0	0	0
Persistent Poverty County Only [25]	9	29	17	36	91

Source: FHFA Analysis of Enterprise Data.

FHFA has identified two main challenges that have hindered the Enterprises' Duty to Serve activities in colonias. The first challenge is an operational one that prevents the Enterprises from easily identifying and verifying Duty to Serve-eligible loan purchases and outreach activities in colonias. The second challenge is related to the ability of the Duty to Serve program to effectively target households in colonias due to their under-inclusion in the Duty to Serve regulation's current ''rural area'' definition. As a result, the number of single-family and multifamily loan purchases in colonias that received Duty to Serve credit has been limited or non-existent to date, as indicated in Figures 1 and 2 above. These challenges and proposed amendments to the Duty to Serve regulation to address them are further discussed below.

1. Operational Challenges With Verifying Duty To Serve-Eligible Activities in Colonias

As noted above, the identification of a colonia under the Duty to Serve regulation relies, in the first instance, on the identification of the community as a colonia using federal, State, tribal, or local definitions. These definitions are based on varied criteria and boundaries. Some rely on descriptive terms that may be meaningful only at the local level, such as neighborhood names, and are generally not tied to any standard geographic identifiers used by lenders such as census tracts. There is no specific, uniform definition of colonia that can be easily operationalized at the regional or national level through inclusion in a public database that the Enterprises and lenders could check to determine if a particular loan is located in an eligible colonia. Instead, the Enterprises and lenders must first determine, for each loan, the applicable federal, State, tribal, or local definition of colonia, and then confirm that a particular loan falls within the specified boundary of a colonia that meets the definition. This is a time-consuming process that is labor-intensive and susceptible to user error. In light of these constraints, the Enterprises cannot provide clear guidance to lenders and other providers about where to target Duty to Serve-eligible lending and outreach activities in colonias.

The Enterprises have adopted various approaches that aim to support lending activity and mitigate the operational challenges of verifying Duty to Serve-eligible activities in colonias. For example, Freddie Mac has engaged partners to implement initiatives to improve homebuyer readiness in colonias through homeownership fairs, housing counseling and homebuyer education, and credit-building activities. Freddie Mac has also directed its efforts to purchase single-family loans from colonias to the six counties in Texas that have both the largest number of colonias and the largest colonia populations in order to efficiently deploy and target its resources.[26] This strategy has enabled Freddie Mac to leverage the efforts of the Texas Secretary of State to map colonias identified under Texas state law. However, the strategy is not easily replicated in other parts of the country where colonias that meet the applicable definition have not been mapped.

Fannie Mae took a different approach under its Plan, in response to FHFA's encouragement in the preamble to the 2016 final rule that the Enterprises collect and share granular data with researchers, lenders, and housing providers to address the data challenges associated with specifically identifying the census tracts that contained colonias.[27] Fannie Mae engaged a nonprofit organization with research capacities, the Housing Assistance Council (HAC), to conduct research and analysis in an effort to develop a nation-wide, usable and programmatic methodology that would enable accurate targeting and tracking of loans in these communities.[28] The research culminated in a report by HAC that proposed using census tracts that contain a colonia as the relevant geographic unit for Duty to Serve credit, which would enable mortgage lenders and other financial service providers to more efficiently and effectively serve such communities.[29] The report highlighted the uncertainty that lenders face in targeting colonias that are

[24] The information presented in Figure 2 regarding multifamily loan purchases does not take into account the differences in the geographic size or population of the high-needs rural regions.

[25] Colonias and rural tracts in Middle Appalachia and the Lower Mississippi Delta may also be located in persistent poverty counties. If a multifamily loan purchase is in a persistent poverty county *and* another high-needs rural region, it is counted under the other high-needs rural region. Multifamily loan purchases counted under a persistent poverty county only are those not located in any of the other high-needs rural regions.

[26] *See* Freddie Mac 2018–2021 Plan, page RH8 (*https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Freddie-Mac-Clean-2018-2021-UMP-Sept2021.pdf*), and Freddie Mac 2022–2024 Plan, page RH11 (*https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf*).

[27] 81 FR 96242, 96276 (Dec. 29, 2016).

[28] Fannie Mae 2018–2021 Plan for the Rural Housing Market, page RH23 (*https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Fannie-Mae-2021-Plan-Mod-Clean-Redacted.pdf*).

[29] *See* Housing Assistance Council, ''Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance,'' (November 2020), available at *https://www.fanniemae.com/media/37566/display.*

eligible for Duty to Serve credit given the lack of a census tract-based definition, as well as the effort and expense associated with verifying that a loan qualifies for Duty to Serve credit. The report concluded that the absence of a widely accepted and standardized definition creates disincentives for the Enterprises to target support for colonias in their Plans.

Proposed Revisions to Regulation To Add Colonia Census Tracts—§ 1282.1(b)

FHFA finds merit in adopting a census tract-based approach that would serve as a proxy for colonias for purposes of identifying and verifying Duty to Serve-eligible activities. Accordingly, the proposed rule would amend § 1281.1(b) of the Duty to Serve regulation by substituting the term ''colonia census tract'' for the term ''colonia'' in the definition of ''high-needs rural region,'' and adding a definition of ''colonia census tract'' to mean a census tract that contains a colonia.

The use of census tracts would greatly enhance the Enterprises' and lenders' ability to identify lending and outreach activities in areas containing colonias that would be eligible for Duty to Serve credit. Census tracts are easily obtained geographic identifiers that are widely used by businesses and governments to classify locations. FHFA publishes and regularly updates on its website a Rural Areas Data file that specifies the census tracts in the other high-needs rural regions where lending and outreach activities are eligible for Duty to Serve credit. To date, colonia census tracts have not been included in the Rural Areas Data file due to the absence of a comprehensive list of census tracts containing colonias, as many of the federal, State, tribal, and local definitions of colonias were not mapped to census tracts. Now that such information is available, FHFA would be able to expand the Rural Areas Data file to include the colonia census tracts. The availability of this information in the Rural Areas Data file would make it easier for the Enterprises and lenders to target outreach and loan purchases in these locations, and to assess the impact of efforts to improve housing conditions in these areas.

A census tract-based approach also would align FHFA's treatment of colonias under the Duty to Serve regulation with other census tract-based standards for Enterprise reporting to FHFA. For example, FHFA collects data at the census tract level to assess compliance with the Duty to Serve and Enterprise Housing Goals. Specifically, census tracts serve as the basis for identifying other geographically-based underserved areas, including low-income areas, and area median income to determine affordability and compliance with Duty to Serve and Enterprise Housing Goals objectives.

Request for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

1. What are the advantages and disadvantages, if any, to using colonia census tracts instead of colonias, for purposes of identifying and verifying Duty to Serve-eligible activities?

2. Are there other ways to identify the geographic areas in which the Enterprises should receive Duty to Serve credit for eligible activities addressing colonias? If so, describe the alternative approach(es) and any advantages and disadvantages over the proposed census tract-based methodology.

2. Challenges Related to Colonias and the ''Rural Area'' Definition

Under the Duty to Serve regulation, an Enterprise is eligible to receive Duty to Serve credit for activities supporting colonias if the activities (*e.g.,* loan purchases) are located in a ''colonia,'' as defined in the regulation, and the colonia is located in a ''rural area,'' as defined in the regulation. As noted above, § 1282.1(b) of the regulation currently defines a ''rural area'' as: (i) a census tract outside of an MSA; or (ii) a census tract in an MSA but outside of the MSA's Urbanized Areas as designated by the USDA RUCA Code #1 and outside of tracts with a housing density of more than 64 housing units per square mile in USDA's RUCA Code #2. The HAC report identified 446 census tracts that contain colonias (based on 2010 census data), with 213 of these census tracts, or less than one-half, meeting the Duty to Serve ''rural area'' definition. HAC subsequently determined that, based on the 2020 census, 577 census tracts contain colonias, with 260 of these census tracts, or less than one-half, meeting the Duty to Serve ''rural area'' definition.[30] Specifically, the 260 colonia census tracts would satisfy par. (i) of the ''rural area'' definition because they are located outside of an MSA, but the remaining 317 colonia census tracts, which are located within an MSA, would not meet the additional qualifying parameters of par. (ii) of the ''rural area'' definition.

FHFA noted in the preamble to its 2016 Duty to Serve final rule that it rejected several definitions of ''colonia'' because they were too restrictive and would result in the Enterprises receiving little or no Duty to Serve credit for activities in colonias.[31] As a result of the recent mapping of federal, State, tribal, and local definitions of colonia to census tracts, FHFA has learned that its definition of ''rural area'' has unintentionally excluded a large share of colonia census tracts from eligibility for Duty to Serve credit. FHFA is proposing to revise the definition of ''rural area'' to include all colonia census tracts (and, therefore, all colonias) to address this oversight. This would enable the Enterprises to receive Duty to Serve credit for purchases of loans located in any colonia census tract, thereby enhancing the ability of the Duty to Serve program to incentivize the Enterprises to support the financing of affordable housing for very low-, low-, and moderate-income households in colonia census tracts.

In the 2015 proposed rule, FHFA had proposed and evaluated various ways to define ''rural area.'' In considering definitions used by other agencies, FHFA noted that there was no single, universally accepted definition of ''rural area'' because the varying definitions were intended to achieve different policy objectives.[32] FHFA explained in the preamble to the 2016 final rule that its ultimate selection for the definition of ''rural area'' was based on three primary criteria that would best support the objectives of the Duty to Serve program: (1) the definition should be broad enough to include rural residents living in outlying counties of metropolitan areas; (2) the definition should remain stable over time to support the Enterprises' Plans; and (3) the definition should remain easy to implement and operationalize by the Enterprises.[33]

Revising the ''rural area'' definition to include all colonia census tracts regardless of location, *i.e.,* whether within or outside an MSA, would be consistent with these three criteria. Regarding the first criterion, in the 2015 proposed rule, FHFA took into consideration a finding that MSAs may no longer be a good way to distinguish

[30] The sizeable increase in census tracts containing colonias using the 2020 geography, from the initial count of 446 using 2010 geography, reflects the increase in the number of census tracts in the region due to population growth. Housing Assistance Council communication with FHFA (August 15, 2022).

[31] 81 FR 96242, 96275 (Dec. 29, 2016).

[32] 80 FR 79181, 79207 (Dec. 18, 2015).

[33] 81 FR 96242, 96273 (Dec. 29, 2016).

urban territory from rural territory.[34] [35] Similarly, several commenters on the 2015 proposed rule stated that the proposed definition of ''rural area'' was overly inclusive within metropolitan areas by including suburban/exurban communities that are not truly rural in character, and overly restrictive within metropolitan areas by excluding some small towns, particularly in the Western U.S., that are truly rural in character.[36] The qualifying parameters in the second component of the ''rural area'' definition (par. (ii)) were added to the definition in the 2016 final rule in an effort to more accurately target areas that are truly rural in character and exclude those that are more realistically classified as suburban/exurban communities, which do not share the challenges to accessing credit that rural markets face.[37]

FHFA has reviewed the characteristics of the colonia census tracts and believes that all colonia census tracts—regardless of where they are located—share important characteristics with census tracts that already meet the ''rural area'' definition. Colonia census tracts—regardless of whether they are located within or outside an MSA—have high poverty rates and low housing density, which contribute to limited access to credit for the households in those communities. In fact, as Figure 3 below demonstrates, the estimated poverty rate for all colonia census tracts is higher than the estimated poverty rate in Duty to Serve rural areas in general, and even higher than the estimated poverty rate in other Duty to Serve high-needs rural regions, including the Lower Mississippi Delta and Middle Appalachia. Figure 3 further demonstrates that the estimated housing density, as measured by housing units per square mile, in all colonia census tracts is lower than the estimated housing density in rural areas in general, and even lower than the estimated housing density in other high-needs rural regions, including the Lower Mississippi Delta and Middle Appalachia. In general, areas with both high poverty rates and low housing density are likely to lack resources and experience credit challenges.[38]

FIGURE 3—ESTIMATED HOUSING DENSITY AND POVERTY RATE BY COLONIA CENSUS TRACT AND HIGH-NEEDS RURAL REGION [39]

Area	Number of census tracts	Housing density (units per sq. mile)	Poverty rate (percent)
All Colonia Census Tracts (DTS ''Rural Area'' Census Tracts and Other Colonia Census Tracts)	446	7	28
Lower Mississippi Delta (DTS ''Rural Area'' Census Tracts)	1,386	17	23
Middle Appalachia (DTS ''Rural Area'' Census Tracts)	1,342	30	21
All DTS ''Rural Area'' Census Tracts	19,227	10	17

Source: FHFA Analysis of 2020 FFIEC data based on the 2015 American Community Survey 5-year estimates.

Households residing in colonia census tracts often lack access to affordable home financing and standard mortgage financing.[40] Recent research indicates that census tracts containing colonias have substantially lower rates of mortgage lending than nearly any other market nationally.[41] Figure 4 below shows that the average annual ratio of conventional loan originations per 1,000 owner-occupied units in colonia census tracts during the period 2015–2017 was 33.5, or less than half the average annual ratio of 73.7 loan originations per 1,000 owner-occupied units in the United States as a whole. The average annual ratio of conventional loans and government-backed (FHA, VA, USDA) loan originations per 1,000 owner-occupied units in colonia census tracts during the same period was 61.5, compared to an average annual ratio of 100.8 loans per 1,000 owner-occupied units in the United States as a whole.

FIGURE 4—RATIO OF HOME LOANS ORIGINATED TO OWNER-OCCUPIED UNITS (ANNUAL AVERAGE 2015–2017)

Area	Conventional loans originated per 1,000 owner-occupied units (annual average 2015–2017)	Total loans (conventional and FHA, VA, USDA) originated per 1,000 owner-occupied units (annual average 2015–2017)
All Colonia Census Tracts (DTS ''Rural Area'' Census Tracts and Other Colonia Census Tracts)	33.5	61.5

[34] 80 FR 79207 (Dec. 18, 2015) (citing United States Government Accountability Office, GAO–05–110, ''Rural Housing—Changing the Definition of Rural Could Improve Eligibility Determinations'' (December 2004), available at *http://www.gao.gov/new.items/d05110.pdf*).

[35] See also The Urban Institute ''In Search of 'Good' Rural Data: Measuring Rural Prosperity'' (April 2020) available at *https://www.urban.org/sites/default/files/publication/102134/in-search-of-good-rural-data.pdf.*

[36] 81 FR 96242, 96273 (Dec. 29, 2016).

[37] *Id.*

[38] Durst, Noah J. and Peter M. Ward, ''Colonia Housing Conditions in Model Subdivisions: A Déjà Vu for Policy Makers,'' Housing Policy Debate 26 (2): 316–333 (2015) available at *https://www.tandfonline.com/doi/abs/10.1080/10511482.2015.1068826?journalCode=rhpd20.*

[39] FHFA used Federal Financial Institutions Examination Council (FFIEC) census reports to calculate housing densities and poverty rates for these underlying census tracts, and then tabulated estimates of these measures for the respective high-needs rural regions.

[40] Housing Assistance Council, ''Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance,'' p. 9 (November 2020), available at *https://www.fanniemae.com/media/37566/display.*

[41] *See* Wiley, Keith, George, Lance and Lipshutz, Sam, ''Colonias Investment Areas: A More Focused Approach,'' p. 27, CityScape, Vol. 23, Number 3 (November 2021), available at *https://www.huduser.gov/portal/periodicals/cityscape/vol23num3/Cityscape-November-2021.pdf.*

FIGURE 4—RATIO OF HOME LOANS ORIGINATED TO OWNER-OCCUPIED UNITS (ANNUAL AVERAGE 2015–2017)—Continued

Area	Conventional loans originated per 1,000 owner-occupied units (annual average 2015–2017)	Total loans (conventional and FHA, VA, USDA) originated per 1,000 owner-occupied units (annual average 2015–2017)
United States	73.7	100.8

Source: Wiley, Keith, George, Lance and Lipshutz, Sam, ''Colonias Investment Areas: A More Focused Approach,'' Figure 20, p. 34, Cityscape, Vol. 23, Number 3 (November 2021), available at *https://www.huduser.gov/portal/periodicals/cityscpe/vol23num3/Cityscape-November-2021.pdf.*

Further, high-cost loans are more common in colonia census tracts than in the United States as a whole. HAC research based on tabulations of 2017 Home Mortgage Disclosure Act data showed that 14.4 percent of loans in colonia census tracts were classified as high-cost, compared to 5.9 percent of loans in the United States as a whole.[42]

There are indications that access to credit in colonias specifically may be even more limited than in other parts of the colonia census tract.[43] Because of the lack of access to standard mortgage financing, colonia residents often purchase lots through a contract for deed, a property financing method whereby developers typically offer a low down payment and low monthly payments but no title to the property until the final payment is made.[44] If contract-for-deed borrowers miss a payment, they run the risk of losing all of the investment they made in the home, in addition to the danger of losing the home itself.[45] Many residents also rely on self-help strategies, rehabilitating their properties incrementally over time when they have available funds, instead of using conventional financing to make improvements on their homes, because they lack conventional financing options.[46]

Regarding the second criterion discussed in the 2016 final rule preamble—that the ''rural area'' definition should remain stable over time to support the Enterprises' Plans—the proposed change to the ''rural area'' definition would, in line with other components of the definition, be based on census tracts and, therefore, remain stable. Since census tract boundaries are updated every ten years to reflect changes in population following the decennial U.S. census, FHFA would comprehensively update the colonia census tracts on a similar timeline and include them in FHFA's Rural Areas Data file. Any intervening changes to federal, State, tribal, or local definitions of colonia, or to the identification of colonias under those definitions, that impact the designation of colonia census tracts could be reflected, as appropriate, as an update to FHFA's Rural Areas Data file. FHFA would not expect to make any such updates during a Plan cycle, to ensure that the Enterprises and market participants can base their decisions on a stable definition.

Regarding the third criterion in the 2016 final rule preamble—that the ''rural area'' definition should remain easy to implement and operationalize by the Enterprises—the proposed definition would improve the Enterprises' ability to implement and operationalize their loan purchase and outreach efforts in colonia census tracts. FHFA would be able to amend the Duty to Serve Rural Areas Data file to include all colonia census tracts regardless of their location. The update of this file would streamline the process of identifying Duty to Serve-eligible loans and enhance certainty for lenders and the Enterprises, who would know from the outset which colonia census tracts to target for loan purchases and outreach and would be certain that those activities would be eligible for Duty to Serve credit. In this manner, the proposed changes to the ''rural area'' definition would promote the achievement of the objectives of the Duty to Serve program.

Proposed Revision of Regulation's ''Rural Area'' Definition—§ 1282.1(b)

For the reasons discussed above, FHFA is proposing to amend the definition of ''rural area'' in § 1282.1(b) to include all colonia census tracts regardless of their location. Specifically, the proposed rule would amend the second component of the ''rural area'' definition (par. (ii)) to include colonia census tracts that would not otherwise satisfy the current ''rural area'' definition.

Request for Comments

FHFA specifically requests comments on the following question (please identify the question answered by the number assigned below):

3. What are the advantages and disadvantages, if any, to revising the Duty to Serve ''rural area'' definition to incorporate all census tracts that contain a colonia regardless of their location?

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the Agency has certified that the regulation

[42] Housing Assistance Council, ''Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance,'' p. 36 (November 2020), available at *https://www.fanniemae.com/media/37566/display.*

[43] *Id.* at 9.

[44] *See* The Federal Reserve Bank of Dallas, ''Las Colonias in the 21st Century: Progress Along the Texas-Mexico Border,'' p. 6 (2015), available at *https://www.dallasfed.org/~/media/documents/cd/pubs/lascolonias.pdf;* and The Federal Reserve Bank of Dallas, ''Texas Colonias: A Thumbnail Sketch of the Conditions, Issues, Challenges and Opportunities,'' p. 3 (1996), available at *https://www.dallasfed.org/~/media/documents/cd/pubs/colonias.pdf.*

[45] *See* Pew Charitable Trusts, ''Less Than Half of States Have Laws Governing 'Land Contracts': Statutes provide limited consumer protection for widely used alternative home financing,'' (April 30, 2021), available at *https://www.pewtrusts.org/en/research-and-analysis/white-papers/2022/02/less-than-half-of-states-have-laws-governing-land-contracts.*

[46] Durst, Noah J. and Ward, Peter M., ''Measuring self-help home improvements in Texas colonias: A ten year 'Snapshot' study,'' pp. 2143–2159, Urban Studies, Vol. 51, No. 10 (August 2014), available at *https://www.jstor.org/stable/26145856?socuuid=ecc189e2-293e-42c2-83ca-8ff6b40c6e43.*

will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act and FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

IV. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted the proposed rule to OMB for review.

List of Subjects in 12 CFR Part 1282

Mortgages; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4501, 4502, 4511, 4513, 4526, and 4561–4566, FHFA proposes to amend part 1282 of subchapter E of 12 CFR chapter XII, as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

■ 2. Amend § 1282.1(b) by:
■ a. Adding, in alphabetical order, the definition of ''Colonia census tract'';
■ b. In paragraph (iii) of the definition ''High-needs rural region'' removing the term ''colonia'' and adding the term ''colonia census tract'' in its place; and
■ c. Revising the definition of ''Rural area''.

The additions and revisions read as follows:

§ 1282.1 Definitions.

* * * * *

Colonia census tract, for purposes of subpart C of this part, means a census tract that contains a colonia.

* * * * *

Rural area, for purposes of subpart C of this part, means:

(i) A census tract outside of a metropolitan statistical area as designated by the Office of Management and Budget; or

(ii) A census tract in a metropolitan statistical area as designated by the Office of Management and Budget that is:

(A) Outside of the metropolitan statistical area's Urbanized Areas as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2; or

(B) A colonia census tract that does not satisfy paragraphs (i) or (ii)(A) of this definition.

* * * * *

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2022–21404 Filed 10–4–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2022–0533]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Insitu Inc. ScanEagle3 Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of and requests comments on proposed airworthiness criteria for the Insitu Inc. Model ScanEagle3 unmanned aircraft (UA). This document proposes the airworthiness criteria that the FAA finds to be appropriate and applicable for the UA design.

DATES: Send comments on or before November 4, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–0533 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: The FAA will post all comments it receives, without change, to *https://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public

contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these proposed airworthiness criteria contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these proposed airworthiness criteria, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these proposed airworthiness criteria. Send submissions containing CBI to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed airworthiness criteria.

Background

Insitu Inc. (Insitu) applied to the FAA on November 10, 2017, for a special class type certificate under 14 CFR 21.17(b) for the Model ScanEagle3 UA.

The Model ScanEagle3 consists of a fixed-wing airplane UA and its associated elements (AE) including communication links and components that control the UA. The Model ScanEagle3 UA has a maximum gross takeoff weight of 85 pounds. It has a wingspan of approximately 13 feet and is approximately 6.5 feet in length. The Model ScanEagle3 UA is powered by a single internal combustion engine. The unmanned aircraft system (UAS) operations would rely on high levels of automation and include a single UA operated by a single pilot. Insitu anticipates operators will use the Model ScanEagle3 for surveillance of linear infrastructure (gas/oil pipelines, electric transmission lines, railroad tracks, etc.), area assessments (forest fires, natural disasters, ship channels, etc.), and maritime operations (ice floe movement, marine mammal tracking, etc.). The proposed concept of operations for the Model ScanEagle3 identifies a maximum operating altitude of 3,500 feet above ground level, a maximum airspeed of 80 knots, operations beyond visual line of sight of the pilot, and operations over human beings. Insitu has not requested type certification for flight into known icing for the Model ScanEagle3.

Under 14 CFR 21.17(c), an application for type certification is effective for 3 years. Section 21.17(d) provides that where a type certificate has not been issued within that 3-year time limit, the applicant may file for an extension and update the designated applicable regulations in the type certification basis. The effective date of the applicable airworthiness requirements for the updated type certification basis must not be earlier than 3 years before the date of issue of the type certificate. Since the project was not certificated within 3 years after the application date above, the FAA approved the applicant's request to extend the project. The date of the updated type certification basis is June 1, 2020, based upon the applicant's proposed type certificate issuance date of June 1, 2023.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. UA are type certificated by the FAA as special class aircraft for which airworthiness standards have not been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

The applicant has proposed a design with constraints upon its operations and an unusual design characteristic: the pilot is remotely located. The FAA developed existing airworthiness standards to establish an appropriate level of safety for each product and its intended use. The FAA's existing airworthiness standards did not envision aircraft with no pilot in the flight deck and the technologies associated with that capability.

The FAA has reviewed the proposed design and assessed the potential risk to the National Airspace System. The FAA considered the size of the proposed aircraft, its maximum airspeed and altitude, and operational limitations to address the number of unmanned aircraft per operator and to address operations in which the aircraft would operate beyond the visual line of sight of the pilot. These factors allowed the FAA to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy.

The proposed criteria focus on mitigating hazards by establishing safety outcomes that must be achieved, rather than by establishing prescriptive requirements that must be met. This is in contrast to many current airworthiness standards, used to certificate traditional aircraft systems, which prescribe specific indicators and instruments for a pilot in a flight deck that would be inappropriate for UA. The FAA finds that the proposed criteria are appropriate and applicable for the UA design, based on the intended operational concepts for the UA as identified by the applicant.

The FAA selected the particular airworthiness criteria proposed by this notice for the following reasons:

General: In order to determine appropriate and applicable airworthiness standards for UA as a special class of aircraft, the FAA determined that the applicant must provide information describing the characteristics and capabilities of the UA and how it will be used.

D&R.001 Concept of Operations: To assist the FAA in identifying and analyzing the risks and impacts associated with integrating the proposed UA design into the National Airspace System, the applicant would be required to submit a Concept of Operations (CONOPS). The proposed criteria would require the applicant's CONOPS to identify the intended operational concepts for the UA and describe the UAS and its operation. The applicant would be required to describe the information in the CONOPS in sufficient detail to determine parameters and extent of testing, as well as operating limitations that will be placed in the UA Flight Manual. If the applicant requests to include collision avoidance equipment, the proposed criteria would require the applicant to identify such equipment in the CONOPS.

D&R.005 Definitions: The proposed criteria include a definitions section, distinguishing the term ''loss of flight'' from ''loss of control.''

Design and Construction: The FAA selected the design and construction criteria in this section to address airworthiness requirements where the flight testing demonstration alone may

not be sufficient to demonstrate an appropriate level of safety.

D&R.100 UA Signal Monitoring and Transmission: To address the risks associated with loss of control of the UA, the applicant would be required to design the UA to monitor and transmit to the AE all information necessary for continued safe flight and operation. Some of the AE are located separately from the UA, and therefore are a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this part of the system. The FAA based some of the proposed criteria on existing regulations that address the information that must be provided to a pilot in the flight deck of a manned aircraft, and modified them as appropriate to the UAS. These proposed criteria list the specific minimum types of information the FAA finds are necessary for the UA to transmit for continued safe flight and operation; however, the applicant must determine whether additional parameters are necessary.

D&R.105 UAS AE Required for Safe UA Operations: Because safe UAS operations depend and rely on both the UA and the AE, the FAA considers the AE in assessing whether the UA meets the criteria that comprise the certification basis. While the AE items themselves will be outside the scope of the UA type design, the applicant must provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The proposed criteria would require a complete and unambiguous identification of the AE and their interface with the UA, so that their availability or use is readily apparent.

As explained in FAA Policy Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, operating certificates, or a combination of these). In this way, the FAA will consider the entirety of the UAS for operational approval and oversight.

D&R.110 Software: Software for manned aircraft is certified under the regulations applicable to systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, or 29.1309). There are two regulations that specifically prescribe airworthiness standards for software: Engine airworthiness standards (§ 33.28) and propeller airworthiness standards (§ 35.23). The proposed UA software criteria are based on these regulations and tailored for the risks posed by UA software.

D&R.115 Cyber Security: The location of the pilot separate from the UA requires a continuous wireless connection (command and control link) with the UA for the pilot to monitor and control it. Because the purpose of this link is to control the aircraft, this makes the UA susceptible to cyber security threats in a unique way.

The current regulations for the certification of systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, and 29.1309) do not adequately address potential security vulnerabilities that could be exploited by unauthorized access to aircraft systems, data buses, and services. For manned aircraft, the FAA therefore issues special conditions for particular designs with network security vulnerabilities.

To address the risks to the UA associated with intentional unauthorized electronic interactions, the applicant would be required to design the UAS's systems and networks to protect against intentional unauthorized electronic interactions and mitigate potential adverse effects. The FAA based the language for the proposed criteria on recommendations in the final report dated August 22, 2016, from the Aircraft System Information Security/Protection (ASISP) working group, under the FAA's Aviation Rulemaking Advisory Committee. Although the recommendations pertained to manned aircraft, the FAA has reviewed the report and determined the recommendations are also appropriate for UA. The wireless connections used by UA make these aircraft susceptible to the same cyber security risks, and therefore require similar criteria as manned aircraft.

D&R.120 Contingency Planning: The location of the pilot and the controls for the UAS, separate from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this feature of the system.

To address the risks associated with loss of communication between the pilot and the UA, and thus the pilot's inability to control the UA, the proposed criteria would require that the UA be designed to automatically execute a predetermined action. Because the pilot needs to be aware of the particular predetermined action the UA will take when there is a loss of communication between the pilot and the UA, the proposed criteria would require that the applicant identify the predetermined action in the UA Flight Manual. The proposed criteria would also include requirements for preventing takeoff when quality of service is inadequate.

D&R.125 Lightning: Because of the size and physical limitations of this UA, it would be unlikely that this UA would incorporate traditional lightning protection features. To address the risks that would result from a lightning strike, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into weather conditions conducive to lightning. The proposed criteria would also allow design characteristics to protect the UA from lightning as an alternative to the prohibition.

D&R.130 Adverse Weather Conditions: Because of the size and physical limitations of this UA, adverse weather such as rain, snow, and icing pose a greater hazard to the UA than to manned aircraft. For the same reason, it would be unlikely that this UA would incorporate traditional protection features from icing. The FAA based the proposed criteria on the icing requirements in 14 CFR 23.2165(b) and (c) and applied them to all of these adverse weather conditions. The proposed criteria would allow design characteristics to protect the UA from adverse weather conditions. As an alternative, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into known adverse weather conditions, and either also prevent inadvertent flight into adverse weather or provide a means to detect and to avoid or exit adverse weather conditions.

D&R.135 Flight Essential Parts: The proposed criteria for flight essential parts are substantively the standards for normal category rotorcraft critical parts in § 27.602, with changes to reflect UA terminology and failure conditions. Because part criticality is dependent on safety risk to those onboard the aircraft, the term ''flight essential'' is used for those components of an unmanned aircraft whose failure may result in loss of flight or unrecoverable loss of UA control.

D&R.140 Reciprocating Engine and Fuel Carriage: Proper storage and movement of fuel onboard the UA is necessary for safe operation. This includes fire prevention and protection, fuel venting and draining, prevention of fuel contamination, and fuel system crashworthiness.

The proposed criteria would require that fluid lines be designed to prevent fires due to high temperature environments. Fuel auto-ignition typically occurs with temperatures in the 450 °F–550 °F range, depending on the fuel type, and oil begins to coke at 300 °F. The proposed criteria would require that fuel lines are fire resistant, as defined in 14 CFR 1.1, at these temperatures to ensure adequate margin between ambient temperatures or hot surfaces and the relevant fluid degradation or ignition temperatures.

The proposed criteria would also require that components be shielded or separated from ignition sources to minimize the possibility of leaking flammable fluids contacting ignition sources and igniting. Ignition sources include hot surfaces with temperatures at or above the typical auto-ignition temperature for aviation fuels, oils, and hydraulic fluids, or any component that produces an electrical discharge. Compliance with the proposed criteria may be shown by installation of drainage shrouds around flammable fluid lines or fittings, installation of spray shields to deflect leaking fuel away from ignition sources, or general component location on the engine that minimizes the possibility of starting and supporting a fire. The applicant's overall substantiation should show that leaked flammable fluid would not likely impinge on an ignition source to the extent of starting and supporting a fire.

The proposed criteria would require adequate and effective ventilation and drainage to prevent the accumulation of fuel or fumes from minor leakage of fuel tanks or lines and minimize the possibility of fire or explosion in these spaces. Component malfunctions that result in a fuel, flammable fluid, or vapor leak should be safely drained or vented overboard to ensure that a fire hazard is not created during either normal or emergency service. Each part of the UA powerplant installation and any other designated fire zone utilizing flammable fluid or vapor carrying components should have the capability for complete, rapid drainage and ventilation. At a minimum, the routing, drainage, and ventilation system should accomplish the following:

(1) It should be effective under normal and emergency operating conditions.

(2) It should be designed and arranged so that no discharged fluid or vapor will create a fire hazard under normal and emergency operating conditions.

(3) It should prevent accumulation of hazardous fluids and vapors in engine compartments and other designated fire zones.

The primary concern with fuel contamination is the introduction of more than trace amounts of water and debris. Rather than requiring specific design features such as sumps, drains, vents, and filters, the proposed criteria require that the UA be designed to prevent hazardous amounts of contamination from reaching the engine. Compliance with this requirement will mitigate the risk of engine failure by addressing fuel contamination before the fuel reaches the engine.

When assessing risk posed by UA, the presence of flammable fluids provides an additional source of potential hazard in the event of an accident due to the possibility of fire, which could spread beyond the immediate impact site of the aircraft. While traditional aircraft considerations with fuel system crashworthiness focuses on occupant protection, the intent of the fuel system crashworthiness for this UA is to ensure crash site containment and prevent the risk of injury or fatality to persons outside the immediate crash site.

The durability and reliability of the engine itself will be demonstrated through the testing required by D&R.300.

Operating Limitations and Information: Similar to manned aircraft, the FAA determined that the UA applicant must provide airworthiness instructions, operating limitations, and flight and performance information necessary for the safe operation and continued operational safety of the UA.

D&R.200 Flight Manual: The proposed criteria for the UA Flight Manual are substantively the same as those in § 23.2620, with minor changes to reflect UA terminology.

D&R.205 Instructions for Continued Airworthiness: The proposed criteria for the Instructions for Continued Airworthiness (ICA) are substantively the same as those in § 23.1529, with minor changes to reflect UA terminology.

Testing: Traditional certification methodologies for manned aircraft are based on design requirements verified at the component level by inspection, analysis, demonstration, or test. Due to the difference in size and complexity, the FAA determined testing methodologies that demonstrate reliability at the aircraft (UA) level, in addition to the design and construction criteria identified in this proposal, will achieve the same safety objective. The proposed testing criteria in sections D&R.300 through D&R.320 utilize these methodologies.

D&R.300 Durability and Reliability: The FAA intends the proposed testing criteria in this section to cover key design aspects and prevent unsafe features at an appropriate level tailored for this UA. The proposed durability and reliability testing would require the applicant to demonstrate safe flight of the UA across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations. The UA would only be certificated for operations within the limitations prescribed for its operating environment, as defined in the applicant's proposed CONOPS and demonstrated by test. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. The proposed criteria would require that all flights during the testing be completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone.

For some aircraft design requirements imposed by existing airworthiness standards (*e.g.,* §§ 23.2135, 23.2600, 25.105, 25.125, 27.141, 27.173, 29.51, 29.177), the aircraft must not require exceptional piloting skill or alertness. These rules recognize that pilots have varying levels of ability and attention. In a similar manner, the proposed criteria would require that the durability and reliability flight testing be performed by a pilot with average skill and alertness.

Flight testing will be used to determine the aircraft's ability to withstand flight loads across the range of operating limits and the flight envelope. Because of the size of this UA, it may be subjected to significant ground loads when handled, lifted, carried, loaded, maintained, and transported physically by hand; therefore, the proposed criteria would require that the aircraft used for testing endure the same worst-case ground loads as those the UA will experience in operation after type certification.

D&R.305 Probable Failures: The FAA intends the proposed testing criteria to evaluate how the UA functions after failures that are probable to occur. The applicant will test the UA by inducing certain failures and demonstrating that the failure will not result in a loss of containment or control of the UA. The proposed criteria contain the minimum types of failures the FAA finds are probable; however, the applicant must determine the probable failures related to any other equipment that will be addressed for this requirement.

D&R.310 Capabilities and Functions: The proposed criteria for this section address the minimum

capabilities and functions the FAA finds are necessary in the design of the UA and would require the applicant to demonstrate these capabilities and functions by test. Due to the location of the pilot and the controls for UAS, separate from the UA, communication between the pilot and the UA is significant to the design. Thus, the proposed criteria would require the applicant to demonstrate the capability of the UAS to regain command and control after a loss. As with manned aircraft, the electrical system of the UA must have a capacity sufficient for all anticipated loads; the proposed criteria would require the applicant to demonstrate this by test.

The proposed criteria contain functions that would allow the pilot to command the UA to deviate from its flight plan or from its pre-programmed flight path. For example, in the event the pilot needs to deconflict the airspace, the UA must be able to respond to pilot inputs that override any pre-programming.

In the event an applicant requests approval for certain features, such as geo-fencing or external cargo, the proposed criteria contain requirements to address the associated risks. The proposed criteria in this section would also require design of the UA to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

D&R.315 Fatigue: The FAA intends the proposed criteria in this section to address the risks from reduced structural integrity and structural failure due to fatigue. The proposed criteria would require the applicant to establish an airframe life limit and demonstrate that loss of flight or loss of control due to structural failure will be avoided throughout the operational life of the UA. These proposed criteria would require the applicant to demonstrate this by test, while maintaining the UA in accordance with the ICA.

D&R.320 Verification of Limits: This section would evaluate structural safety and address the risks associated with inadequate structural design. While the proposed criteria in D&R.300 address testing to demonstrate that the UA structure adequately supports expected loads throughout the flight and operational envelopes, the proposed criteria in this section would require an evaluation of the performance, maneuverability, stability, and control of the UA with a factor of safety.

Applicability

These proposed airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Model ScanEagle3 UA. Should Insitu Inc. apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for one model UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

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

Proposed Airworthiness Criteria

The FAA proposes to establish the following airworthiness criteria for type certification of the Insitu Inc. Model ScanEagle3 UA. The FAA proposes that compliance with the following would mitigate the risks associated with the proposed design and Concept of Operations appropriately and would provide an equivalent level of safety to existing rules:

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the National Airspace System for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all fuel and energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical

requirements of the AE, including performance, compatibility, function, reliability, interface, operator alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA that the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the operator all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the Instructions for Continued Airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cybersecurity

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link, defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations section of the ICA.

D&R.140 Reciprocating Engine and Fuel Carriage

The applicant must show that the engine meets the following requirements.

(a) Lines containing or conveying flammable fluids subject to high temperatures must be fire resistant.

(b) Components must be shielded or located to safeguard against the ignition of leaking flammable fluid.

(c) Compartments, including fuel tanks, where flammable fluid or vapor may exist must have adequate and effective ventilation and drainage.

(d) The powerplant installation must be designed to prevent hazardous amounts of contamination of the fuel supplied to the engine.

(e) The fuel system must protect the UA from damage that could result in spillage of enough fuel to constitute a fire hazard as a result of a reasonably foreseeable UA accident, based on the operating environment documented in the CONOPS.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare the ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification

if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;
(2) Flight durations;
(3) Route complexity;
(4) Weight;
(5) Center of gravity;
(6) Density altitude;
(7) Outside air temperature;
(8) Airspeed;
(9) Wind;
(10) Weather;
(11) Operation at night, if requested;
(12) Fuel and energy storage system capacity; and
(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or the external load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and
(2) The cargo or the external load is retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;
(2) C2 link;
(3) Global Positioning System (GPS);
(4) Flight control components with a single point of failure;
(5) Control station; and
(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.
(2) Capability of the electrical system to power all UA systems and payloads.
(3) Ability for the pilot to safely discontinue the flight.
(4) Ability for the pilot to dynamically re-route the UA.
(5) Ability to safely abort a takeoff.
(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.
(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.
(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.
(4) Capability to release an external cargo load to prevent loss of control of the UA.
(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on September 29, 2022.

Ian Lucas,

Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–21571 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1253; Project Identifier MCAI–2022–00698–T]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace LP Model Gulfstream G280 airplanes. This proposed AD was prompted by a determination that the existing wet runway performance tables in the airplane flight manual (AFM) may not provide an acceptable level of safety. This proposed AD would require revising the existing AFM to incorporate new wet runway performance tables, as

specified in a Civil Aviation Authority of Israel (CAAI) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 21, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this material on the CAAI website at *caa.gov.il.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1253.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1253; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1253; Project Identifier MCAI–2022–00698–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The CAAI, which is the aviation authority for Israel, has issued CAAI AD ISR–I–97–2022–04–9, dated May 1, 2022 (CAAI AD ISR–I–97–2022–04–9) (also referred to as the MCAI), to correct an unsafe condition for all Gulfstream Aerospace LP Model Gulfstream G280 airplanes.

This proposed AD was prompted by the determination that the existing wet runway performance tables in the AFM may not provide an acceptable level of safety, and that the wet runway performance tables have been updated in the Performance section of the G280 AFM, Revision 10. The FAA is proposing this AD to address the existing wet runway performance tables that could allow the airplane to experience runway excursions or overruns during takeoff. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

CAAI AD ISR–I–97–2022–04–9 specifies procedures for updating the Performance section of the G280 AFM to incorporate new wet runway tables.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in CAAI AD ISR–I–97–2022–04–9 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate CAAI AD ISR–I–97–2022–04–9 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with CAAI AD ISR–

I–97–2022–04–9 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by CAAI AD ISR–I–97–2022–04–9 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1253 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 195 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$16,575

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP: Docket No. FAA–2022–1253; Project Identifier MCAI–2022–00698–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace LP Model Gulfstream G280 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a determination that the existing wet runway performance tables in the airplane flight manual (AFM) may not provide an acceptable level of safety. The FAA is proposing this AD to address the existing AFM wet runway performance tables that could allow the airplane to experience runway excursions or overruns during takeoff.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Civil Aviation Authority of Israel (CAAI) AD ISR–I–97–2022–04–9.

(h) Exception to CAAI AD ISR–I–97–2022–04–9

Where CAAI AD ISR–I–97–2022–04–9 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or CAAI; or CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(j) Related Information

(1) For CAAI AD ISR–I–97–2022–04–9, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this CAAI AD on the CAAI website at *caa.gov.il.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1253.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer,

Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

Issued on September 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–21572 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1068; Project Identifier AD–2022–00358–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–8 and 737–9 airplanes, and certain Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of damage to the auxiliary power unit (APU) fuel line shroud located in the aft cargo area; investigation revealed that the placement of the pressure switch wire clamp assembly and its fastener allowed interference of the fastener against the APU fuel line shroud. This proposed AD would require inspecting the APU fuel line shroud for damage, inspecting the pressure switch wire clamp for correct bolt orientation and horizontal distance from the APU fuel line shroud, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 21, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1068.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1068; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3552; email: *christopher.r.baker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1068; Project Identifier AD–2022–00358–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3552; email: *christopher.r.baker@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports of damage to the APU fuel line shroud located in the aft cargo area of certain models of the subject airplanes. FAA and manufacturer investigation revealed that the placement of the pressure switch wire clamp assembly and its fastener allowed interference of the fastener against the APU fuel line shroud. This condition, if not addressed, could result in a damaged APU fuel line shroud and consequent failure of the APU fuel hose, which could result in a flammable fluid leak in an ignition zone.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletins 737–38A1072 RB and 737–38A1073 RB, both dated February 25, 2022. This service information specifies procedures for a general visual inspection of the APU fuel line shroud in the area within 3 inches of the fastener of the pressure switch wire clamp for any damage (any crack or hole, any damage that exposes bare metal on the APU fuel line shroud,

and any dent damage found that decreases the outside diameter of the shroud by more than 0.031 inch); a detailed inspection of the pressure switch wire clamp to determine if the fastener of the pressure switch wire clamp is installed with the bolt head on top and the nut on the bottom, and that there is a minimum 1.5 inches of horizontal separation between the fastener of the pressure switch wire clamp and the APU fuel line shroud, and applicable on-condition actions. On-condition actions include replacing the existing APU fuel line shroud with a new or repaired shroud; repairing any damage to the APU fuel line shroud; re-installing the fastener of the pressure switch wire clamp with the bolt head on top and the nut on the bottom; and re-installing the pressure switch wire clamp assembly to make sure there is 1.5 inches minimum of horizontal separation between the fastener of the pressure switch wire clamp and the APU fuel line shroud. These documents are distinct since they apply to different airplane models.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at regulations.gov by searching for and locating Docket No. FAA–2022–1068.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,919 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
One-time Inspections	2 work-hours × $85 per hour = $170	$0	$170	$326,230

The FAA estimates the following costs to do any necessary repairs, replacements, or re-installations that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these repairs, replacements, or re-installations:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 3 work-hours × $85 per hour = Up to $255	$0	Up to $255.
Replacement (includes re-installation)	Up to 300 work-hours × $85 per hour = Up to $25,500.	Up to $8,158	Up to $33,658.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1068; Project Identifier AD–2022–00358–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as identified in Boeing Alert Requirements Bulletin 737–38A1072 RB, dated February 25, 2022.

(2) Model 737–8 and 737–9 airplanes, as identified in Boeing Alert Requirements Bulletin 737–38A1073 RB, dated February 25, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of damage to the auxiliary power unit (APU) fuel line shroud located in the aft cargo area; investigation revealed that the placement of the pressure switch wire clamp assembly and the fastener allowed interference of the fastener against the APU fuel line shroud. The FAA is issuing this AD to address interference of the fastener against the APU fuel line shroud, possibly resulting in a damaged APU fuel line shroud and consequent failure of the APU fuel hose, which could result in a flammable fluid leak in an ignition zone.

(f) Compliance

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

(g) Required Actions

(1) For the airplanes identified in paragraph (c)(1) of this AD, except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–38A1072 RB, dated February 25, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–38A1072 RB, dated February 25, 2022.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–38A1072, dated February 25, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–38A1072 RB, dated February 25, 2022.

(2) For the airplanes identified in paragraph (c)(2) of this AD, except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–38A1073 RB, dated February 25, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–38A1073 RB, dated February 25, 2022.

Note 2 to paragraph (g)(2): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–38A1073, dated February 25, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–38A1073 RB, dated February 25, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraphs of Boeing Alert Requirements Bulletin 737–38A1072 RB, dated February 25, 2022, use the phrase ''the original issue date of Requirements Bulletin 737–38A1072 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraphs of Boeing Alert Requirements Bulletin 737–38A1073 RB, dated February 25, 2022, use the phrase ''the original issue date of Requirements Bulletin 737–38A1073 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3552; email: *christopher.r.baker@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet myboeingfleet.com. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on August 30, 2022.

Christina Underwood,

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

[FR Doc. 2022–21398 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1236; Project Identifier MCAI–2021–01376–T]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a report of a thrust reverser actuation system (TRAS) deploy hose failure upon the commanded deployment of a thrust reverser. This proposed AD would require removing each non-conforming TRAS deploy hose, and replacing it with a conforming TRAS deploy hose, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 21, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *tc.canada.ca/en/aviation.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1236.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1236; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; 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–2022–1236; Project Identifier MCAI–2021–01376–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; 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 TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2021–46, dated December 8, 2021 (TCCA AD CF–2021–46) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

This proposed AD was prompted by a report of a TRAS deploy hose failure upon the commanded deployment of a thrust reverser. It was found that certain TRAS deploy hoses were made with incomplete installation of the wire overbraid, which created a weak point and subsequently led to failure of the deploy hose. The FAA is proposing this AD to address failure of a deploy hose, which could lead to loss of thrust reverser function and hydraulic systems. Losing one or both thrust reversers during landing on a contaminated runway could lead to a runway excursion. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2021–46 specifies procedures for removing each non-conforming TRAS deploy hose, and replacing it with a conforming TRAS deploy hose. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Explanation of Affected Thrust Reversers

The service information referenced in TCCA AD CF–2021–46 specifies a list of affected thrust reversers (the non-conforming TRAS deploy hoses are installed on the affected thrust reversers). Airbus Canada has notified the FAA that the list in Airbus Canada Limited Partnership Service Bulletin BD500–783002, Issue 001, dated October 22, 2020, contains incorrect part numbers for several serial numbers. Later revisions of the service information contain correct part and serial numbers. In addition, Table 1 to paragraph (h)(3) specifies the correct part and serial numbers for the affected thrust reversers.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in TCCA AD CF–2021–46 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate TCCA AD CF–2021–46 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with TCCA AD CF–2021–46 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by TCCA

AD CF–2021–46 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1236 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 8 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	* $0	$255	$2,040

* The FAA has received no definitive data on which to base the cost estimates for the parts specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2022–1236; Project Identifier MCAI–2021–01376–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2021–46, dated December 8, 2021 (TCCA AD CF–2021–46).

(d) Subject

Air Transport Association (ATA) of America Code 14, Hardware; 24, Electrical Power; 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by a report of a thrust reverser actuation system (TRAS) deploy hose failure upon the commanded deployment of a thrust reverser. The FAA is issuing this AD to address failure of a deploy hose, which could lead to loss of thrust reverser function and hydraulic systems. Losing one or both thrust reversers during landing on a contaminated runway could lead to a runway excursion.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, TCCA AD CF–2021–46.

(h) Exception to TCCA AD CF–2021–46

(1) Where TCCA AD CF–2021–46 refers to hours air time, this AD requires using flight hours.

(2) Where TCCA AD CF–2021–46 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where any service information referenced in TCCA AD CF–2021–46 lists affected thrust reversers, this AD requires using the serial and part numbers listed in table 1 to paragraph (h)(3) of this AD.

Table 1 to paragraph (h)(3) of this AD – *Affected Thrust Reversers*

Serial Number	Part Number
296001	999-3002-577
297001	999-3002-575
298001	999-3002-577
299001	999-3002-575
300001	999-3002-577
301001	999-3002-575
302001	999-3002-577
303001	999-3002-575
304001	999-3002-577
305001	999-3002-575
306001	999-3002-577
307001	999-3002-575
308001	999-3002-577
309001	999-3002-575
310001	999-3002-577
311001	999-3002-575

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or TCCA; or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) For TCCA AD CF–2021–46, contact TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *tc.canada.ca/en/aviation.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1236.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

Issued on September 26, 2022.

Christina Underwood,

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

[FR Doc. 2022–21450 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1251; Project Identifier MCAI–2022–00588–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 adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by an investigation that indicated that one of the springs in the pitch trim switch of the horizontal stabilizer had failed. The failure of the spring could result in the airplane pitching nose down when actually commanded nose up. This proposed AD would require a verification of the serial numbers of certain pitch trim switches, and replacement of the affected pitch trim switches with new ones in the pilot and co-pilot control wheels. This proposed AD would also prohibit the installation of affected parts. 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 November 21, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response

Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1251; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; 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–2022–1251; Project Identifier MCAI–2022–00588–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 Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; 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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–24, dated May 2, 2022 (TCCA AD CF–2022–24) (also referred to after this as the MCAI), to correct an unsafe condition on all Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states that during several in-service events, following a stab trim fault advisory message and an auto-pilot disconnect, both pilot and co-pilot commands to trim the horizontal stabilizer nose-up resulted in a nose-down movement of the horizontal stabilizer. In two events, the horizontal stabilizer reached the full travel nose-down position before the crew recognized the nature of the problem, and quickly recovered control of the airplane for safe landing. As a result, this led to increased crew workload and reduced safety margins.

Subsequent investigation by Bombardier and the supplier of the horizontal stabilizer pitch trim switch determined that one of the springs within the pitch trim switch had failed. The supplier of the springs was changed in 2019. The majority of observed pitch trim switch failures occurred in pitch trim switches that were manufactured after 2019.

TCCA AD CF–2022–24 requires the replacement of the affected pitch trim switches with re-designed pitch trim switches that have reliable springs. The FAA is issuing this AD to address the failure of the springs in the pitch trim switch, which, if not corrected, could result in the airplane pitching nose down when actually commanded nose up, resulting in reduced controllability of the airplane and high control forces.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1251.

Related Service Information Under 1 CFR Part 51

The FAA has reviewed Bombardier Service Bulletin 100–27–21, dated March 21, 2022, for Model BD–100–1A10 (CH–300) airplanes, S/Ns 20003 to 20500. This service information describes procedures for verifying serial numbers (S/Ns) of certain pitch trim switch part numbers in the pilot and co-pilot control wheels, and replacing affected pitch trim switches.

The FAA has also reviewed Bombardier Service Bulletin 350–27–011, dated March 21, 2022, for Model BD–100–1A10 (CH–350) airplanes, S/Ns 20501 to 20936. This service information describes procedures for verifying S/Ns of certain pitch trim switch part numbers in leather and non-leather covered pilot and co-pilot control wheels, and replacing affected pitch trim switches.

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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the 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 require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit the installation of affected pitch trim switches.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 697 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 per product
Switch inspection	1 work-hour × $85 per hour = $85	N/A	$59,245

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts	Cost per product
Switch replacement (Airplane S/Ns 20003–20500)	4 work-hours × $85 per hour = $340	$2,352	$2,692
Switch replacement (Airplane S/Ns 20501–20936)	4 work-hours × $85 per hour = $340	2,442	2,782

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2022–1251; Project Identifier MCAI–2022–00588–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the investigation that one of the springs in the pitch trim switch for the horizontal stabilizer had failed. The FAA is issuing this AD to address the failure of the springs in the pitch trim switch. The unsafe condition, if not corrected, could result in the airplane pitching nose down when actually commanded nose up, and the flightcrew may not be able to regain control of the horizontal stabilizer, resulting in reduced controllability of the airplane and high control forces.

(f) Compliance

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

(g) Review of the Airplane Records

Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, review the airplane (technical) records for the horizontal stabilizer pitch trim switches and control wheels to determine the date of replacement, if any, of the pilot or co-pilot trim switch and control wheels.

(1) If the pilot or co-pilot pitch trim switch or control wheels were removed after January 1, 2019, and the replacement pitch trim switches have serial numbers 02000 and subsequent, then no further action is required other than compliance with paragraph (j) of this AD.

(2) For airplanes with serial numbers (S/Ns) 20003 through 20780 inclusive: If no pilot or co-pilot pitch trim switch or control wheel was replaced after January 1, 2019, then no further action is required other than compliance with paragraph (j) of this AD.

(3) For airplanes with S/Ns 20901 through 20936 inclusive: If no pilot or co-pilot pitch trim switch or control wheel has been replaced on an airplane, then no further action is required other than compliance with paragraph (j) of this AD.

(h) Verification and Replacement of Pitch Trim Switches

For airplanes not identified in paragraphs (g)(1) through (3) of this AD: Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, identify the serial numbers of both the pilot and co-pilot pitch trim switches, and do the applicable actions specified in paragraph (h)(1) or (2) of this AD.

(1) If the pilot or co-pilot pitch trim switch has a serial number that is not listed in figure 2 to paragraph (h) of this AD, before further flight re-install the pitch trim switch in accordance with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(2) If the pilot or co-pilot pitch trim switch has a serial number listed in figure 2 to paragraph (h) of this AD, before further flight, replace the pitch trim switch in accordance

with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(3) Before further flight perform the operational test in accordance with Section 2.C. of the Accomplishment Instructions of the applicable service information identified Bombardier SB listed in figure 1 to paragraph (h) of this AD.

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Figure 1 to paragraph (h) - *Applicable Bombardier Service Bulletins*

Bombardier SB	Airplane Serial number
100-27-21 - Special Check/Modification - Pitch Trim System - Replacement of Pitch Trim Switches on Pilot and Co-Pilot Control Wheels, Basic Issue, dated March 21, 2022	20003 through 20500
350-27-011 - Special Check/Modification - Pitch Trim System - Replacement of Pitch Trim Switches on Pilot and Co-Pilot Control Wheels, Basic Issue, dated March 21, 2002	20501 through 20936

Figure 2 to paragraph (h) - *Serial Numbers of Affected Pitch Trim Switches to be Removed and Replaced*

Pitch Trim Switch Part Number (P/N)	Serial Number (S/N)
83452541	01583 through 01604 inclusive 01610 through 01622 inclusive 01628 through 01635 inclusive
83452548	00001 through 01999 inclusive

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(i) Verification/Replacement of Pitch Trim Switches for Airplanes With S/Ns 20501 and Subsequent With Certain Control Wheel P/Ns 83912156 and 83912157

For airplanes with S/Ns 20501 and subsequent with leather-covered control wheels, pilot control wheel P/N 83912156, or co-pilot control wheel P/N 83912157: Within 200 flight hours or 6 months, whichever occurs first, from the effective date of this AD, remove and inspect both the pilot and co-pilot pitch trim switches to determine the part number of the pitch trim switch in accordance with Section 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–27–011, dated March 21, 2002.

(1) If pitch trim switch P/N 83452541 or P/N 83452548 is found installed in either the pilot or the co-pilot control wheel, before further flight, replace the pitch trim switch with pitch trim switch P/N 83452548, serial number 02000 and subsequent, in accordance with Section 2.B. of the Accomplishment Instructions of the applicable service information identified in figure 1 to paragraph (h) of this AD.

(2) Before further flight thereafter perform the operational test in accordance with Section 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 350–27–011, dated March 21, 2002.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a trim switch P/N 83452548 or P/N 83452541 with any serial number listed in figure 2 to paragraph (h) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2022–24, dated May 2, 2022, for related information. This MCAI may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1251.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on September 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–21573 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1207; Airspace Docket No. 22–ANE–9]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace; Manchester and Nashua, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace, Class E airspace designated as an extension to a Class C surface area, and Class E airspace extending upward from 700 feet above the surface at Manchester Boston Regional Airport (formerly Manchester Airport), Manchester, NH, and update the airport's geographic coordinates. Also, this action proposes to amend Class D airspace, Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Boire Field Airport (formerly Boire Field), by updating each airport's name and, and removing unnecessary verbiage from the airport description. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before November 21, 2022.

ADDRESSES: Send comments on this proposal to: the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2022–1207; Airspace Docket No. 22–ANE–9 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend airspace in Manchester and Nashua, NH, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2022–1207 and Airspace Docket No. 22–ANE–9) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1207; Airspace Docket No. 22–ANE–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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 Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to Class E surface airspace, Class E airspace designated as an extension to a Class C surface area, and Class E airspace extending upward from 700 feet above the surface at Manchester Boston Regional Airport (formerly Manchester Airport) Manchester, NH, and update this airport's geographic coordinates to coincide with the FAA's database. Also, this action proposes to amend Class D airspace, Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Boire Field Airport (formerly Boire Field), by updating each airport's name, and removing unnecessary verbiage from the airport description, as per Order JO 7400.2N. This action would also replace the term Notice to Airmen with the term Notice to Air Missions, and the term Airport/Facility Directory with the term Chart Supplement in the airspace descriptions.

Class E airspace designations are published in Paragraphs 5000, 6002, 6003, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this 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.

Lists 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 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 Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE NH D Nashua, NH [Amended]

Boire Field Airport, NH
(Lat. 42°46′57″ N, long. 71°30′51″ W)
Pepperell Airport, MA
(Lat. 42°41′46″ N, long. 71°33′00″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Boire Field Airport; excluding that airspace within a 2-mile radius of Pepperell Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ANE NH E2 Manchester, NH [Amended]

Manchester Boston Regional Airport, NH
(Lat. 42°55′58″ N, long. 71°26′09″ W)

That airspace extending upward from surface the within a 5-mile radius of the Manchester Boston Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6003 Class E Airspace Designated as an Extension to Class C Area.

* * * * *

ANE NH E3 Manchester, NH [Amended]

Manchester Boston Regional Airport, NH
(Lat. 42°55′58″ N, long. 71°26′09″ W)

That airspace extending upward from the surface within 3.3-miles each side of the 337° bearing of Manchester Boston Regional Airport extending from the 5-mile radius to 8.5-miles northwest of the airport.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area.

* * * * *

ANE NH E4 Nashua, NH [Amended]

Boire Field Airport, NH
(Lat. 42°46′57″ N, long. 71°30′51″ W)
Manchester VOR/DME
(Lat. 42°52′07″ N, long. 71°22′10″ W)

That airspace extending upward from the surface within 1.1 miles on each side of the Manchester VOR/DME 231° radial extending from the 5-mile radius to 8.4 miles northeast of Boire Field Airport.

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

* * * * *

ANE NH E5 Nashua, NH [Amended]

Boire Field Airport, NH
(Lat. 42°46′57″ N, long. 71°30′51″ W)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Boire Field Airport.

ANE NH E5 Manchester, NH [Amended]

Manchester Boston Regional Airport, NH
(Lat. 42°55′58″ N, long. 71°26′09″ W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Boston Regional Airport.

Issued in College Park, Georgia, on September 29, 2022.

Lisa Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization

[FR Doc. 2022–21513 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–100719–21]

RIN 1545–BQ26

User Fees Relating to Enrolled Actuaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to imposing user fees for enrolled actuaries. The proposed regulations increase both the enrollment and renewal of enrollment user fees for enrolled actuaries from $250.00 to $680.00. The proposed regulations affect individuals who apply to become an enrolled actuary or seek to renew their enrollment. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

DATES: Electronic or written comments must be received by December 5, 2022. The public hearing is being held by teleconference on December 16, 2022 at 10 a.m. EDT. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 14, 2022. If no outlines are received by December 5, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EDT on December 14, 2022. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by December 13, 2022.

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–100719–21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. Send paper submissions to: CC:PA:LPD:PR (REG–100719–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. The IRS will publish any comments submitted to the public docket.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100719–21).

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–100719–21 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–100719–21. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend the public hearing by telephone must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–100719–21 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–100719–21. To request special assistance during the telephonic hearing contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Carolyn M. Lee at 202–317–6845; concerning cost methodology, Michael A. Weber at (202) 803–9738; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317–5177 (not toll-free numbers), or *publichearings@irs.gov*.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 300 regarding user fees.

Regulations establish certain requirements for individuals who seek to provide actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) Pub. L. 93–406, Title III, § 3042, Sept. 2, 1974, 88 Stat. 1002. To account for its costs of providing enrolled actuary enrollment and renewal of enrollment services, the IRS charges a user fee to apply for enrollment or renew enrollment as an enrolled actuary. This proposal would increase the amount of the user fee from $250.00 per enrollment application or renewal application to $680.00 per enrollment application or renewal application.

A. Enrolled Actuaries

ERISA directed the Secretary of Labor and the Secretary of the Treasury to establish a Joint Board for the Enrollment of Actuaries (Joint Board). 29 U.S.C. 1241. The Joint Board consists of three members and one alternate member appointed by the Secretary of the Treasury, two members and one alternate member appointed by the Secretary of Labor, and one non-voting representative designated by the Director of the Pension Benefit Guaranty Corporation. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury appoints an Executive Director who has the delegated authority to administer the Joint Board's enrollment and renewal of enrollment processes. The Secretary of the Treasury delegated these functions to the IRS and the costs of these activities are borne by the IRS. The Executive Director, an IRS Return Preparer Office (RPO) employee, administers the enrollment and renewal of enrollment processes for the Joint Board.

Pursuant to 29 U.S.C. 1242(a), the Joint Board establishes reasonable standards and qualifications for persons performing actuarial services and is empowered to enroll such individuals who, upon application, satisfy these standards and qualifications. The regulations at 20 CFR part 901, subpart B prescribe eligibility requirements for enrollment and renewal of enrollment. An enrolled actuary is any individual who has satisfied the standards and qualifications as set forth in the regulations of the Joint Board and who has been approved by the Joint Board to perform actuarial services required under ERISA.

Before conferring status as an enrolled actuary to an individual, the Joint Board must verify the individual fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. 20 CFR 901.12(a). The RPO Joint Board staff oversees this verification as part of its responsibility to administer the enrollment application and renewal application processes for the Joint Board. An applicant may be denied enrollment for disreputable conduct (20 CFR 901.12(f)(1)), conviction of specified offenses (20 CFR 901.12(f)(2)), submitting false or misleading information on the enrollment application (20 CFR 901.12(f)(3)), or knowingly submitting false or misleading information on any report presenting actuarial information to any person (*id.*). An individual applying for enrollment as an enrolled actuary must submit a Form 5434, *Joint Board for the Enrollment of Actuaries—Application for Enrollment,* and pay the current non-refundable $250.00 user fee. 20 CFR 901.10(a).

Enrollment is for a three-year term. 20 CFR 901.1(k). Before the Joint Board will renew an actuary's enrollment, the enrolled actuary must certify he or she has satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board, including a minimum of 36 (thirty-six) hours of CPE in prescribed core and non-core subject matter courses during the three-year enrollment cycle. 20 CFR 901.11(e).

Core subject matter is program content and knowledge integral and necessary to the satisfactory performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code, and includes content concerning the ethical standards of performance for actuarial services. 20 CFR 901.11(f)(1)(i). An individual applying to renew enrollment as an enrolled actuary must submit a Form 5434–A, *Joint Board for the Enrollment of Actuaries—Application for Renewal of Enrollment,* and pay the current non-refundable $250.00 user fee. 20 CFR 901.11(d). The RPO Joint Board staff verifies the enrolled actuary's certification as part of its responsibilities to administer the enrollment and renewal of enrollment processes for the Joint Board.

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department) and requires that an individual seeking to practice demonstrate necessary qualifications, competency, and good character and reputation. The rules governing practice before the IRS are published in 31 CFR, Subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230). Under section 10.3(d)(1) of Circular 230, any individual who is enrolled as an actuary by the Joint Board and who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. Section 10.3(d)(2) provides that an enrolled actuary's authority to practice before the IRS is limited to matters involving certain provisions of the Internal Revenue Code.

B. User Fee Authority

The Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services the agency provides (user fees). The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The IOAA provides that user fee regulations are subject to policies prescribed by the President. The policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25 (OMB Circular A–25), 58 FR 38142 (July 15, 1993).

Section 6a(1) of OMB Circular A–25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Section 8e of OMB Circular A–25 requires agencies to review user fees biennially and update the fees as necessary to reflect changes in the cost of providing the underlying services. During the biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. Under section 6d(1) of OMB Circular A–25, the full cost of providing a service includes, but is not limited to, an appropriate share of salaries, medical insurance and retirement benefits, management costs, and physical overhead, and other indirect costs, including rents, utilities, and travel associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full-cost requirement. Under section 6c(2) of OMB Circular A–25, the OMB may grant exceptions when the cost of collecting the fees would represent an unduly large part of the fee for the activity or when any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and must fund the remaining cost of providing the service from other available funding sources. Consequently, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those recipients who would otherwise be required to pay the full cost of providing the service as provided for by the IOAA and OMB Circular A–25.

C. Enrolled Actuary User Fee

An individual who has been granted new enrollment or renewal of enrollment as an enrolled actuary by the Joint Board may perform actuarial services under ERISA and practice before the IRS as provided by section 10.3(d) of Circular 230. The enrollment confers benefits on individuals who are enrolled actuaries beyond those that accrue to the general public. Because these are specific benefits not available to the general public, the IRS charges a user fee to recover the full cost associated with the administration of the enrollment and renewal of enrollment processes.

Final regulations (TD 9370) published in the **Federal Register** (72 FR 72606–01) on December 21, 2007, established the current $250.00 user fee for the enrollment application and renewal of enrollment application processes for enrolled actuaries. At that time, the Treasury Department and the IRS determined that a $250.00 user fee per application to enroll or renew enrollment as an enrolled actuary would recover the full direct and indirect costs the government would incur to administer the enrollment and renewal of enrollment processes.

As required by OMB Circular A–25, the IRS has conducted biennial reviews of this user fee since it was established by regulation in 2007. These reviews either resulted in a user fee calculation of approximately $250.00 or otherwise did not result in the Treasury Department and the IRS increasing the fee. In 2021 the IRS conducted a biennial review and calculated its costs associated with administering the enrolled actuary enrollment and renewal of enrollment processes. As discussed in Section D of this preamble, during the review, the IRS took into account increases in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled actuaries since the user fee was promulgated in 2007. The costs include activities related to verifying that an individual meets the requirements for enrollment or renewal of enrollment as an enrolled actuary. The RPO also took into account a re-allocation of certain labor costs in their methodology to include costs associated with certain human capital matters, formalizing policies and procedures, and other administrative support. The number of employees, the percentage allocation of time spent by employees performing activities directly related to the enrollment or renewal of enrollment processes, and the associated oversight and support labor costs were increased from those costs underlying the current $250.00 user fee.

The costs to the RPO Joint Board staff of performing enrollment and renewal of enrollment processes are the same. The IRS determined that the full cost of administering the enrollment and renewal of enrollment processes increased from $250.00 to $680.00 per enrollment or renewal of enrollment. The proposed fee is an increase of $143.33 per year for the three-year enrollment period.

D. Calculation of User Fees Generally

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the enrolled actuary enrollment and renewal of enrollment processes. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS.

FASAB publishes the FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at *https://files.fasab.gov/pdffiles/2021_%20FASAB_%20Handbook.pdf.* The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) 4: Managerial Cost Accounting Standards and Concepts.*

SFFAS 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with SFFAS 4.

1. Cost Center Allocation

The IRS determines the cost of its services and the activities involved in providing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost accounting system. The costs charged to a cost center are the direct costs for the cost center's activities in addition to allocated overhead. Some cost centers work on different services across the IRS and are not fully dedicated to the services for which the IRS charges user fees.

2. Cost Estimation of Direct Costs

The IRS uses various cost measurement techniques to estimate the costs attributable to the enrolled actuary enrollment and renewal of enrollment processes. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject matter experts on the time devoted to a program. To determine the labor and benefits costs incurred to provide the service of enrolling actuaries, the IRS estimated the number of full-time employees required to conduct activities related to administering the enrollment and renewal of enrollment processes. The number of full-time employees is based on both current employment numbers and future hiring estimates. Other direct costs associated with administering the enrollment and renewal of enrollment processes include travel, training, and supplies.

3. Overhead

When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost. Overhead is the indirect cost of operating an organization that is not specifically identifiable with a single activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and supporting organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants, and equipment.
- Publication, reproduction, graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a specific service, the IRS multiplies an overhead rate by the estimated direct costs of the service. The IRS calculates the overhead rate annually based on the Statement of Net Cost included in the IRS annual financial statements. The financial statements are audited by the Government Accountability Office. The overhead rate is the ratio of the IRS's indirect costs divided by direct costs of its organizational units. Indirect costs are labor, benefits, and non-labor costs (excluding IT related to taxpayer services, enforcement, and business system modernization) from the supporting and sustaining organizational units. Direct costs are labor, benefits, and non-labor costs for the IRS's organizational units that interact directly with taxpayers.

For the enrolled actuary user fee review, an overhead rate of 58.83 percent was used. The rate was calculated based on the Fiscal Year (FY) 2020 Statement of Net Cost as follows:

Total Indirect Costs	$4,274,512,375
Total Direct Costs	$7,265,460,800
Overhead Rate	58.83%

E. Calculation of Enrolled Actuary Enrollment and Renewal of Enrollment User Fees

1. Cost Estimate

The IRS projected the estimated costs of direct labor and benefits based on the actual salary and benefits of employees who devote time to conducting enrolled actuary enrollment and renewal of enrollment processes, reduced to reflect the percentage of time each individual spends on those activities. The RPO's managers estimated the percentage of time these employees devote to conducting enrolled actuary enrollment and renewal of enrollment activities based on their knowledge of actual program assignments. Four employees devote an average of sixty-five percent of their time over the three-year enrollment cycle to enrolled actuary enrollment or renewal of enrollment activities. Prior biennial review costing analyses had understated the cost by only taking into account an average of forty percent of their time to enrolled actuary enrollment or renewal of enrollment activities. Additional staffing costs include oversight and support associated with these functions.

The baseline for the labor and benefits estimate was the actual salary and benefits for FY 2021. From this baseline, the IRS estimated the direct labor and benefits costs over the next three years using an inflation factor for FYs 2022, 2023, and 2024. The IRS used a three-year projection because the increase in future labor and benefits costs are reliably predictable representations of the actual costs that will be incurred by the RPO. These estimated direct labor and benefits costs were then reduced to reflect the percentage of time each individual devoted to enrolled actuary enrollment and renewal of enrollment activities and are set out in the following table:

Year	Estimated costs for direct labor and benefits
2022	$546,457
2023	557,659
2024	569,101
Total	1,673,217

In addition, the IRS estimated $3,500 in direct costs for each year for travel, training, and supplies, or $10,500 total in this category for the three-year projection.

The total estimated direct costs for the three years is $1,683,717. After estimating the total direct costs, the IRS applied the FY 2021 overhead rate of 58.83 percent to the estimated direct costs to calculate indirect costs of $990,531, for a total cost for the three-year period of $2,674,248.

The calculation of the total cost of the enrolled actuary enrollment and renewal of enrollment program for 2022 through 2024 is shown below:

Direct Costs	$1,683,717
Overhead at 58.83%	+ 990,531
Total Costs	2,674,248

2. Volume of Applications

The number of applicants during FYs 2018, 2019, and 2020 were 214, 132, and 3,584, respectively. The higher number of applicants in 2020 follows the historical norm of most renewals of enrollment occurring every third year. The total number of applications for the three years was 3,930. The IRS used this historical three-year volume to estimate the number of applicants for FYs 2022, 2023, and 2024.

3. Unit Cost per Application

To arrive at the total cost per application, the IRS divided the estimated three-year total of enrolled actuaries costs by the total volume of applications expected over the same three-year period to determine a per-application cost of $680.00, as shown below:

Total Costs	$2,674,248
Number of Applications	÷ 3,930
Cost per Application	$680

Special Analyses

I. Regulatory Planning and Review

These regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6), (RFA) requires the agency ''to prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to the requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6). The Treasury Department and the IRS conclude that the proposed regulations, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered.

The change in enrolled actuary user fees is being considered in compliance with Section 6a(1) of OMB Circular A–25, which states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Enrollment as an enrolled actuary confers special benefits to identifiable recipients; such ''identifiable recipients'' are new and renewing enrolled actuaries authorized to provide pension actuarial services and actuarial calculations under ERISA and the Internal Revenue Code. The IRS incurs costs associated with enrollment and renewal of enrollment verification and approval processes. The Treasury Department and the IRS previously determined that the full cost to the IRS of the enrollment and renewal of enrollment processes was $250.00 for each enrollment and each renewal of enrollment. In accordance with OMB Circular A–25, the Treasury Department and the IRS conducted a biennial review of the enrolled actuary user fee amount in 2021 and determined that the full cost to the IRS of the enrollment and renewal of enrollment processes for each enrolled actuary candidate is $680.00 per enrollment and renewal of enrollment, an increase of $143.33 per year for the three-year enrollment period.

Succinct statement of the objectives of, and the legal basis for, the proposed rule.

The objective of the proposed regulations is to recover the costs to the government associated with providing the services conferring the special benefit that accrues to an individual whom the Joint Board enrolls as a new or renewing enrolled actuary. When performing its duties, the RPO Joint Board staff conducts enrollment and renewal of enrollment processes including verifying that the individual applying for new or renewed enrolled actuary status fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. In addition, with respect to an individual seeking to renew as an enrolled actuary, the RPO Joint Board staff must verify that the renewing enrolled actuary properly certified that he or she satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board. Section 6a(1) of OMB Circular A–25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. An individual who is enrolled as an actuary by the Joint Board is conferred the special benefits of being authorized to perform actuarial services under ERISA and to practice before the IRS as provided by section 10.3(d) of Circular 230. These benefits are not available to the general public.

The legal basis for the fee for initial enrollment and the fee for renewal of enrollment as an enrolled actuary with the Joint Board is section 9701 of title 31.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The proposed regulations affect actuaries who apply for enrollment as an enrolled actuary or renewal of enrollment with the Joint Board. Only individuals, not businesses, can apply for new enrollment or to renew enrolled actuary certification. Therefore, the economic impact of these regulations on any small entity generally will be the result of an individual actuary owning a small business, or a small business employing an actuary and requiring the individual to apply for enrolled actuary status or renew as an enrolled actuary with the Joint Board. An estimate of the number of small entities to which the proposed rule will apply is not available.

The appropriate NAICS codes for enrolled actuaries are those that relate to the performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code: NAICS code 524298, other insurance related activities; NAICS code 525110, employee benefit plans, retirement plans, pension funds and plans; and NAICS code 541611, administrative management and general management consulting services. The Small Business Administration establishes size standards for concerns considered to be small, as provided by 13 CFR 121.201. Pursuant to 13 CFR 121.201, concerns within NAICS 524298 are considered to be small if their annual receipts are less than or equal to $27.0 million; NAICS 525110, $35.0 million; and NAICS 541611, $21.5 million.

A description of the projected recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to such requirements that the type of professional skills necessary for preparation of the report or record.

No reporting or recordkeeping requirements are projected to be associated with the proposed regulations.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including a discussion of significant alternatives.

The IOAA authorizes the government to charge user fees for agency services, subject to policies designated by the President. OMB Circular A–25 implements presidential policies regarding user fees and encourages user fees when a government agency provides services that confer a special benefit to a member of the public. In the IOAA, Congress has stated a preference that the costs of providing such services should be self-sustaining. OMB Circular A–25 expressly states that the agency providing such services generally must charge a user fee to recover the full cost of providing the service.

The IRS, acting through the RPO Joint Board staff, provides services which confer special benefits to the enrolled actuaries who will be subject to these user fees. Individuals who wish to perform pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code and practice before the IRS must satisfy the standards and qualifications as set forth in the regulations of the Joint Board for persons performing actuarial services required under ERISA. Only after the Joint Board verifies that an individual satisfied the stated standards and qualifications—either as a new enrolled actuary applicant or a renewing enrolled actuary—will the individual be enrolled as an enrolled actuary. An enrolled actuary must renew his or her certification every three years to ensure the required competence and compliance with ethical standards of performance for actuarial service.

Due to the costs of administering the new enrollment and renewal of enrollment processes, and the expressed preference in the IOAA that government services conferring special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *www.regulations.gov* and upon request.

A public hearing is being held by teleconference on December 16, 2022 beginning at 10 a.m. EDT. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments by telephone at the hearing must submit electronic or written comments and an outline of the topics to be addressed and the time to be devoted to each topic by December 5, 2022 as prescribed in the preamble under the **ADDRESSES** section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at *www.regulations.gov,* search IRS and REG–100719–21. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov*. Please put ''REG–100719–21 Agenda Request'' in the subject line of the email.

Drafting Information

The principal author of these regulations is Carolyn M. Lee, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 300 as follows:

PART 300—USER FEES

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ 2. Amend § 300.7 by revising paragraphs (b) and (d) to read as follows:

§ 300.7 Enrollment of enrolled actuary fee.

* * * * *

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $680.00.

* * * * *

(d) *Applicability date.* This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

■ 3. Amend § 300.8 by revising paragraphs (b) and (d) to read as follows:

§ 300.8 Renewal of enrollment of enrolled actuary fee.

* * * * *

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $680.00.

* * * * *

(d) *Applicability date.* This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

Paul J. Mamo,

Assistant Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–21458 Filed 10–4–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0914]

RIN 1625–AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to extend the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be effected. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before November 4, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0914 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.[1] That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842).

In August 2022, the U.S. Army Corps of Engineers (USACE) informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for another two years. Therefore, the Coast Guard proposes to extend the effective period of the temporary safety zone through January 31, 2025.

Damage to the temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Captain of the Port Marine Safety Unit Port Arthur (COTP) is proposing to extend the effective period of the temporary safety zone for navigable waters of Taylor Bayou for two additional years until January 31, 2025. There are no other changes to the regulatory text of this rule cited in 33 CFR T08–0914. This rule would continue to prohibit all persons and vessel from entering the safety zone unless authorized by the COTP or a designated representative.

IV. Regulatory Analyses

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

[1] See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG–2017–0797 (83 FR 4843).

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and entities impacted by the safety zone. This safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29°50′57.45 N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves extending the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2017–0194 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. In § 165.T08–0914 revise paragraph (d) to read as follows:

§ 165.T08–0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

* * * * *

(d) *Enforcement date.* This safety zone is in effect from February 1, 2022 through January 31, 2025. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: September 28, 2022.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Unit Port Arthur.

[FR Doc. 2022–21432 Filed 10–4–22; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 87, No. 192

Wednesday, October 5, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Programs Reporting System

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this revision of a currently approved information collection. This is a collection for the electronic submission of programmatic and financial data through the Food Programs Reporting System (FPRS). The data is currently collected on approved Office of Management and Budget (OMB) forms.

DATES: Written comments must be received on or before December 5, 2022.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comment.

Preferred Method: Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

Mail: Comments may be mailed to: Tim Kreh, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Tim Kreh at 703–305–2339.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Food Programs Reporting System (FPRS).

OMB Number: 0584–0594.

Expiration Date: 07/31/2023.

Type of Request: Revision of a currently approved information collection request.

Abstract: The Food and Nutrition Service (FNS) is the Federal agency responsible for managing the domestic nutrition assistance programs. Its mission is to increase food security and reduce hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthful diet, and nutrition education in a manner that supports American agriculture and inspires public confidence. The domestic nutrition assistance programs include the Supplemental Nutrition Assistance Program (SNAP), the Child Nutrition programs such as the National School Lunch (NSLP) and School Breakfast Programs (SBP), Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Commodity Supplemental Food Program (CSFP), Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and the Senior Farmers' Market Nutrition Program (SFMNP). Currently, the nutrition assistance programs managed by FNS touch the lives of 1 in 4 Americans over the course of a year.

Federal nutrition assistance programs operate as partnerships between FNS, State, Indian Tribal Organizations (ITOs), and local organizations that interact directly with program participants. States and ITOs voluntarily enter into agreements with the Federal Government to operate programs according to Federal standards in exchange for program funds that cover all benefit costs, and a significant portion of administrative expenses. Under these agreements, FNS is responsible for implementing statutory requirements that set national program standards for eligibility and benefits, providing Federal funding to States, ITOs and local partners, and monitoring and evaluation to make sure that program structures and policies are properly implemented and effective in meeting program missions. States, ITOs and local organizations are responsible for delivering benefits efficiently, effectively, and in a manner consistent with national requirements. States and ITOs may operate all or some of the 15 different domestic nutrition assistance programs.

The FNS is consolidating certain programmatic and financial data reporting requirements that are currently approved by the Office of Management and Budget, under the Food Programs Reporting System (FPRS), an electronic reporting system. The purpose is to give States and ITO agencies one portal for the various reporting required for the programs that the States and ITOs operate. The data collected is used for a variety of purposes; mainly program evaluation, planning, audits, funding, research, regulatory compliance and general statistics.

Reporting Burden Estimates

Affected Public: State, Local and Tribal Organizations.

Estimated Number of Respondents: 14,298.

Estimated Frequency of Responses per Respondent: 2.95510.

Estimated Total Annual Responses: 42,252.

Estimated Time per Response: 3.03046.

Estimated Total Annual Burden Hours on Respondents: 128,043.

This collection does not contain any recordkeeping or third-party disclosure burden estimates. Any recordkeeping required, is maintained in other agency OMB control numbers.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–21628 Filed 10–4–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Disposal of Mineral Materials

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA), Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection Disposal of Mineral Materials.

DATES: Comments must be received in writing on or before December 5, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice and public inspection of the comments should be addressed to the person under **FOR FURTHER INFORMATION CONTACT**. Comments also may be submitted via facsimile to 303–275–5122 or phone: 720–618–9961.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting Bruce Schumacher, Paleontology Program Coordinator, USDA, Forest Service, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401 or phone: 720–618–9961 or email: *bruce.schumacher@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title of Collection: Disposal of Minerals Materials.

OMB Control Number: 0956–0081.

Type of Review: Revisions of a currently approved information collection.

Expiration Date of Approval: December 31, 2024.

Abstract: The Secretary of Agriculture has the statutory authority per 16 U.S.C. 470aaa–3 (section 6304), and as detailed in 36 CFR 291, to allow permitted research and collection of paleontological resources. This authority stipulates the Secretary may issue a permit pursuant to an application, which requires that (1) the applicant is qualified to carry out the permitted activity; (2) the permitted activity is undertaken for the purpose of furthering paleontological knowledge or for public education; (3) the permitted activity is consistent with any management plan applicable to the Federal land concerned; and (4) the proposed methods of collecting will not threaten significant natural resources. Permit applications also require terms and conditions as the Secretary deems necessary to carry out the purposes of the subtitle, including requirements that (1) the paleontological resource that is collected from Federal land under the permit will remain the property of the United States; (2) the paleontological resource and copies of associated records will be preserved for the public in an approved repository, to be made available for scientific research and public education; and (3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

Specific Forest Service regulations detailing permitting and the need for information collection are at 36 CFR 291.13–291.23.

This information is used to ensure permit applicants are (1) qualified to undertake the proposed research and collection activities, (2) to ensure that an approved non-federal repository is willing (signed agreement) to accept all paleontological resources (federal property) collected under the proposed activity, and (3) to allow Forest Service staff to undertake environmental review of the proposed activity.

Permit reporting information is used to contribute toward the Forest Service national database documenting paleontological localities on National Forest System lands, and to provide accountability for federal property held in trust by non-federal partner repositories.

Information collected includes details of the proposed research collection activity including contact information for the permit applicant, and a signed repository agreement arranged by the permit applicant with a non-federal approved repository to accept Federal property in perpetuity at no cost to government. Following completion of permitted activities, permit holders are required to submit a final report to the Forest Service as detailed in 36 CFR 291.17, and in accordance with standard scientific best management practice. The process requires no financial information.

This information collection does not impact small businesses or other small entities. There is no fee associated with review of FS–2800–22A applications, nor issuance of FS–2800–22B permits.

If the information was not collected, the Forest Service would not be able to authorize research and collection of paleontological resources, and therefore would not be in compliance with U.S.C. 470aaa–1 (Sec. 6302. Management.) which states that ''The Secretary shall manage and protect paleontological resources on Federal land using scientific principles and expertise''.

Title of Collection: FS–2800–22A application.

Estimate of Annual Burden: 165 hours.

Type of Respondents: Applicants.

Estimated Annual Number of Respondents: 30.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.5 hours.

Title of Collection: FS–2800–22B oversite and report review.

Estimate of Annual Burden: 6.25 hours.

Type of Respondents: Permit Holders.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 0.25 hours.

Title of Collection: FS–2800–22C locality form review and database entry.

Estimate of Annual Burden: 162.5 hours.

Type of Respondents: Permit Holders, Repositories.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6.5 hours.

Title of Collection: Burden Hours for FS–2800–22D specimen.

Estimate of Annual Burden: 162.5 hours.

Type of Respondents: Permit Holders, Repositories.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6.5 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 29, 2022.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–21570 Filed 10–4–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request Approval To Establish a New Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request a new information collection titled ''*Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR)Programs Lifecycle Certification.*''

DATES: Written comments on this notice must be received by December 5, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Programs Lifecycle Certification.

OMB Control Number: 0524-New.

Type of Request: Notice of intent to request a new information collection entitled ''Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Programs Lifecycle Certification.''

NIFA asks recipients of SBIR and STTR grants to submit the Lifecycle Certification form as part of their interim and final reports, as required by the Small Business Administration's ''SBA SBIR/STTR Policy Directive,'' October 1, 2020.

Abstract: The SBIR/STTR program at the U.S. Department of Agriculture (USDA) makes competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful.

The objectives of the SBIR/STTR Program are to: stimulate technological innovations in the private sector; strengthen the role of small businesses in meeting Federal research and development needs; increase private sector commercialization of innovations derived from USDA-supported research and development efforts; and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovations. The USDA SBIR program is carried out in three separate phases:

1. Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

2. Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

3. Phase III awards where commercial applications of SBIR-funded R/R&D are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements.

The USDA SBIR Program is administered by the National Institute of Food and Agriculture (NIFA) of the USDA. NIFA exercises overall oversight for the policies and procedures governing SBIR grants awarded to the U.S. small business community, representing approximately 2.5% to 2.8% of the USDA extramural R/R&D budget. This represents approximately $201M in Phase II grants awarded to the U.S. small business community from 1994 to 2014.In 1982, the Small Business Innovation Research (SBIR) Grants Program (Pub. L. 97–219, 96 Stat. 217) was authorized, and in 2016, The National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), enacted on December 23, 2016, reauthorized the SBIR and STTR programs through September 30, 2022.

The Lifecycle Certification form is used by USDA to ensure Small Business Concerns continue to meet specific program requirements during the life of the Funding Agreement. The Lifecycle Certification form is based on the Small Business Administration (SBA) model language.

Estimate of Burden: The annual public reporting burden for the collection of information is estimated to average one (1) hour per response. Respondents include businesses or other for-profit concerns.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 2.

Estimated Burden per Response: 1 hour.

Estimated Total Annual Burden on Respondents: 500 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection 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 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of August 9, 2022.

Dionne Toombs,

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

[FR Doc. 2022–21555 Filed 10–4–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request a New Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval for a new information collection titled *Small Business Innovation Research (SBIR) Funding Agreement Certifications.*

DATES: Written comments on this notice must be received by December 5, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Small Business Innovation Research (SBIR) Funding Agreement Certifications.

Type of Request: Notice of intent to request a new information collection.

NIFA is requesting approval for a new information collection entitled ''Small Business Innovation Research (SBIR) Funding Agreement Certifications.'' This information collection includes two forms: a ''Funding Agreement Certification'' and a ''Certification for SBIR Applicants that are Majority-Owned by Multiple Venture Capital Operating Companies, Hedge Fund or Private Equity Firms.'' NIFA asks all recipients of SBIR grants to submit a Funding Agreement Certification form after NIFA has provided the grantee notification of the award, as well as any other time set forth in the funding agreement. For example, the small business concern (SBC) may be required to update the form to assure continued eligibility and compliance, when changes in the SBC apply. NIFA also asks SBIR applicants that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to submit an additional certification form prior to submitting an application. These certification statements are for the purpose of determining the eligibility of the small business concern for an SBIR award. NIFA is proposing implementation of these forms to match the guidance provided in the SBA SBIR/STTR Policy Directive effective October 1, 2020.

Abstract: The SBIR program at the U.S. Department of Agriculture (USDA) makes competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful.

The objectives of the SBIR Program are to: stimulate technological innovations in the private sector; strengthen the role of small businesses in meeting Federal research and development needs; increase private sector commercialization of innovations derived from USDA-supported research and development efforts; and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovations. The USDA SBIR program is carried out in three separate phases:

1. Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

2. Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

3. Phase III awards where commercial applications of SBIR-funded R(Research)/R&D (Research and Development) are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements.

The USDA SBIR Program is administered by the National Institute of Food and Agriculture (NIFA) of the USDA. NIFA exercises overall oversight for the policies and procedures governing SBIR grants awarded to the U.S. small business community, representing approximately 2.5% to 2.8% of the USDA extramural R/R&D budget. This represents approximately $201M in Phase II grants awarded to the U.S. small business community from 1994 to 2014. In 1982, the Small Business Innovation Research (SBIR) Grants Program (Pub. L. 97–219, 96 stat. 217), 15 U.S.C. 638, was authorized, and in 2016, The National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), enacted on December 23, 2016, reauthorized the SBIR and STTR programs through September 30, 2022.

The Funding Agreement Certification form is used by USDA to ensure Small Business Concerns meet specific eligibility requirements for a Small Business Innovation and Research award. The form asks applicants to certify a series of ten statements in order to ensure the grantee is complying with specific program requirements during the life of the funding agreement. If the SBC is majority-owned by venture capital companies, hedge funds, or private equity firms they will be required to fill out an eight-question form in addition to the Funding Agreement Certification. The small business concern may be required to update the Funding Agreement Certification form to assure continued eligibility and compliance when changes in the SBC apply.

Estimate of Burden: The forms in this collection are required to be completed for Phase I and Phase II awardees and updated when there is a change in the business regarding the contents of the certification form.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 1 hour.

Estimated Total Burden on Respondents: 110 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection 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 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of August 09, 2022.

Dionne Toombs,

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

[FR Doc. 2022–21558 Filed 10–4–22; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–22–Telecom–0010]

Rural eConnectivity Program, Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Utilities Service (the Agency) published a Funding Opportunity Announcement (FOA) in the **Federal Register** of August 4, 2022, entitled Rural eConnectivity Program (ReConnect Program) to announce that it was accepting a second round of applications for fiscal year 2022 (FY 22) utilizing funding provided under the Infrastructure and Investment Jobs Act. In addition, the FOA defined requirements that are determined at the time a funding announcement is published, as outlined in the regulation.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding the ReConnect Program, contact Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email *laurel.leverrier@usda.gov,* telephone: (202) 720–9554.

For inquiries regarding eligibility concerns, please contact the ReConnect Program Staff at *https://www.usda.gov/reconnect/contact-us.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2022–16694 of August 4, 2022, in FR Doc #2022–16694, (87 FR 47690), the Congressional Review Act section is being updated to amend the date by which application selections will not begin until the date is passed.

On page 47695, in column 3, under Section I.2. the Congressional Review Act section should read as follows:

2. *Congressional Review Act.* Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application selection will not begin until after October 9, 2022. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the ReConnect Program.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–21534 Filed 10–4–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Request for Nominations of Members To Serve on the National Advisory Committee on Racial, Ethnic, and Other Populations

AGENCY: Census Bureau, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Director of the Census Bureau (Director) is seeking nominations for the National Advisory Committee on Racial, Ethnic and Other Populations (NAC). The purpose of the NAC is to provide advice to the Director on the full range of economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, behaviorial and operational variables affecting the cost, accuracy and implementation of Census Bureau programs and surveys, including the decennial census. The Director has determined that the work of the NAC is in the public interest and relevant to the duties of the Census Bureau. Therefore, the Director is seeking nominations to fill vacancies on the NAC. Additional information concerning the NAC can be found by visiting the NAC's website at: *https://www.census.gov/about/cac/sac.html.*

DATES: Nominations must be received on or before November 18, 2022. Nominations must contain a completed resume. The Census Bureau will retain nominations received after the deadline for consideration should additional vacancies occur.

ADDRESSES: Please submit nominations via email to the address listed below, *census.national.advisory.committee@census.gov* (subject line 2022 NAC Nominations'').

FOR FURTHER INFORMATION CONTACT: Shana Banks, Chief, Advisory Committee Brach, Office of Program, Performance and Stakeholder Integration (PPSI), Census Bureau, by telephone at 301–763–3815 or by email at *Shana.J.Banks@census.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Federal Advisory Committee Act (FACA), Title 5, United States Code, Appendix 2, Section 10, the Director of the Census Bureau is seeking nominations for the National Advisory Committee on Racial, Ethnic, and Other Populations (NAC). The NAC will operate under the provisions of FACA and will report to the Secretary of the Department of Commerce through the Director of the Census Bureau.

The Census Bureau's National Advisory Committee on Racial, Ethnic, and Other Populations will advise the Director of the Census Bureau on the full range of Census Bureau programs and activities. The Advisory Committee will provide race, ethnic, and other population expertise from the following disciplines: economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, and behavioral and operational variables affecting the cost, accuracy, and implementation of Census Bureau programs and surveys, including the decennial census.

Objectives and Duties

1. The NAC advises the Director of the Census Bureau (the Director) on the full range of economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, behavioral, and operational variables affecting the cost, accuracy, and implementation of Census Bureau programs and surveys, including the decennial census.

2. The NAC advises the Census Bureau on the data needs of underserved communities and how census data products might address such needs.

3. The NAC provides guidance on census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

4. The NAC reviews and provides formal recommendations and feedback on working papers, reports, and other

documents related to the design and implementation of Census Bureau programs and surveys.

5. In providing insight, perspectives, and expertise on the full spectrum of Census Bureau surveys and programs, the NAC examines such areas as hidden households, language barriers, students and youth, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, poverty, race/ethnic distribution, privacy and confidentiality, rural populations and businesses, individuals and households with limited access to information and communications technologies, the dynamic nature of new businesses, minority ownership of businesses, as well as other concerns impacting Census Bureau survey design and implementation.

6. The NAC uses formal advisory committee meetings, webinars, web conferences, working groups, and other methods to accomplish its goals, consistent with the requirements of the FACA. The NAC will consult with regional office staff to help identify regional, local, tribal and grass roots issues, trends and perspectives related to Census Bureau surveys and programs.

7. The NAC functions solely as an advisory body under the FACA.

Membership

1. The NAC consists of up to 32 members who serve at the discretion of the Director. The Census Bureau is seeking eight qualified candidates to be considered for appointment.

2. The NAC aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of census programs and/or activities.

3. The NAC aims to include members from diverse backgrounds, including state, local and tribal governments; academia; research, national, and community-based organizations; employers; and labor unions, among other organizations.

4. Members will be selected from the public and private sectors. Members may serve as Special Government Employees (SGEs) who are selected to represent specific organizations.

5. SGEs will be selected based on their expertise in or representation of specific areas to include: Diverse populations (including race and ethnic populations); national, state, local, and tribal interest organizations serving hard-to-count populations; researchers; community-based organizations; academia; business interests; marketing and media professionals; researchers; and, members of professional associations. Members will be individually advised of the capacity in which they will serve through their appointment letters.

6. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates Program, other Census Advisory Committees, etc.). People who have already served one full-term on a Census Bureau Advisory Committee may not serve on any other Census Bureau Advisory Committee for three years from the termination of previous service. No employee of the federal government can serve as a member of the NAC.

7. Members will serve for a three-year term. All members will be reevaluated at the conclusion of each term with the prospect of renewal, pending the committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for a second three-year term at the discretion of the Director.

8. Members will be selected on a standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the NAC serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The NAC meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Bureau Director or Designated Federal Officer. All NAC meetings are open to the public in accordance with the FACA.

Nomination Process

1. Nominations should satisfy the requirements described in the Membership section above.

2. Individuals, groups, and/or organizations may submit nominations on behalf of candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the committee, including, but not limited to, regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse NAC membership.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: September 28, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–21539 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

National Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the National Advisory Committee on Racial, Ethnic and Other Populations (NAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including the decennial census, demographic and economic statistical programs, field operations, and information technology. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: The virtual meeting will be held on: Thursday, October 27, 2022, from 10 a.m. to 4 p.m. ET, and Friday, October 28, 2022, from 10 a.m. to 2:30 p.m. ET.

ADDRESSES: Please visit the Census Advisory Committee website at *https://www.census.gov/about/cac/nac/meetings/2022-10-meeting.html,* for the NAC meeting information, including the agenda, and how to view the meeting.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The NAC provides technical expertise to address Census Bureau program needs and objectives. The members of the NAC are

appointed by the Director of the Census Bureau. The NAC has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. Public comments will be accepted in written form via email to *shana.j.banks@census.gov,* (subject line ''2022 NAC Fall Virtual Meeting Public Comment''). A brief period will be set aside during the virtual meeting to read public comments received by noon ET, October 27, 2022. All public comments received will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: September 28, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–21536 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Membership of the Performance Review Board for the Office of the Secretary

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of membership on the Office of the Secretary Performance Review Board.

SUMMARY: The Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and Senior Level (SL) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments and bonuses. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Office of the Secretary Performance Review Board begins on October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Christine Covington, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW, Room 50021, Washington, DC 20230, at (202) 482–2613.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Office of the Secretary, Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Office of the Secretary Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) and (SL) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments and bonuses. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. LaMarsha DeMarr, Director, Human Resources Services, Enterprise Services, OS Career SES
2. Rachit Choksi, Director for Oversight, OS Non-Career SES
3. Michael Phelps, Director, Office of Budget, OS Career SES
4. Brian DiGiacomo, Assistant General Counsel for Employment, Litigation, and Information Law, OGC, Career SES
5. Anne Driscoll, Deputy Assistant Secretary for Industry and Analysis, ITA, Career SES
6. Robert Heilferty, Director Chief Counsel for Enforcement and Compliance OS, Career SES
7. Terri Ware, Deputy Chief Information Officer for Policy and Business Management OS, Career SES
8. Andrew Berke Senior Advisor (Special Representative for Broadband), NTIA, Non-Career SES
9. Angela Martinez, Denver Regional Director, EDA, Career SES
10. Beth Grossman, Assistant General Counsel for Employment Litigation, and Information Law, OS Career SES
11. Holden Hoofnagle, Director, OS Financial Management, OS Career SES

Dated: September 30, 2022.

Christine Covington,

Human Resources Specialist, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2022–21618 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–181–2022]

Foreign-Trade Zone 207—Richmond, Virginia; Application for Subzone; Voestalpine High Performance Metals LLC, South Boston, Virginia

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Capital Region Airport Commission, grantee of FTZ 207, requesting subzone status for the facility of voestalpine High Performance Metals LLC (voestalpine), located in South Boston, Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 29, 2022.

The proposed subzone (49 acres) is located at 2306 Eastover Drive, South Boston, Virginia. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–39–2022). The proposed subzone would be subject to the existing activation limit of FTZ 207.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 14, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: September 29, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–21544 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Tito Calderon Olvera, 5282 Murfreesboro Rd., La Vergne, TN 37086

On February 26, 2020, in the U.S. District Court for the Western District of Texas, Tito Calderon Olvera (''Olvera'') was convicted of violating 18 U.S.C. 554(a). Specifically, Olvera was convicted of knowingly and unlawfully attempting to export from the United States to Mexico, a firearm, namely a Glock ''GEN 4,'' .45 caliber handgun bearing serial number ''YBX379;'' five Glock magazines; and multiple rounds of .45 caliber ammunition, which are firearms as defined by the United States Munitions List, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Olvera to 18 months with credit for time served and three years of supervised release.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Olvera's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Olvera to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Olvera.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Olvera's export privileges under the Regulations for a period of five years from the date of Olvera's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Olvera had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until February 26, 2025, Tito Calderon Olvera, with a last known address of 5282 Murfreesboro Rd., La Vergne, TN 37086, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''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, 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, reexport, or transfer (in-country) 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, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Olvera by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Olvera may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Olvera and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 26, 2025.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21600 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Mehdi Hashemi, a/k/a Eddie Hashemi, 10390 Wilshire Boulevard, Apartment 907, Los Angeles, CA 90024

On July 6, 2020, in the U.S. District Court for the Central District of California, Mehdi Hashemi, a/k/a Eddie Hashemi (''Hashemi''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA''). Specifically, Hashemi was convicted of knowingly and willfully attempting to export

Computer Numerical Control (''CNC'') machines [1] from the United States to Iran via the United Arab Emirates, a third country, in violation of the regulations that apply to exports to Iran. Hashemi did so without first having applied for obtained, from either the Bureau of Industry and Security or the U.S. Department of Treasury's Office of Foreign Assets Control, a license or authorization for such export. As a result of his conviction, the Court sentenced Hashemi to 367 days incarceration, three years of supervised release, and a $100 court assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[2] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Hashemi's conviction for violating IEEPA, and has provided notice and opportunity for Hashemi to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[3] BIS has not received a written submission from Hashemi.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Hashemi's export privileges under the Regulations for a period of 10 years from the date of Hashemi's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Hashemi had an interest at the time of his conviction.[4]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until July 6, 2030, Mehdi Hashemi, a/k/a Eddie Hashemi, with a last known address of, 10390 Wilshire Boulevard, Apartment 907, Los Angeles, CA 90024, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''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, 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, reexport, or transfer (in-country) 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, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Hashemi by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Hashemi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hashemi and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 6, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21598 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DT–P

[1] The CNC machines were classified under Export Control Classification numbers 2B202, 2B991, and EAR99.

[2] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[4] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Bryan Villanueva-Valles, Inmate Number: 37368–480, FCI Herlong, Federal Correctional Institution, P.O. Box 800, Herlong, CA 96113

On January 10, 2020, in the U.S. District Court for the Western District of Texas, Bryan Villanueva-Valles (''Villanueva-Valles'') was convicted of violating 18 U.S.C. 554(a). Specifically, Villanueva-Valles was convicted of knowingly and unlawfully attempting to export, send, conceal and facilitate the transportation and concealment of various rifles and handguns from the United States to Mexico, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Villanueva-Valles to 108 months in prison, three years of supervised release, $300 assessment and a forfeiture of $11,900.00.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Villanueva-Valles's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Villanueva-Valles to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Villanueva-Valles.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Villanueva-Valles's export privileges under the Regulations for a period of 10 years from the date of Villanueva-Valles's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Villanueva-Valles had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until January 10, 2030, Bryan Villanueva-Valles, with a last known address of Inmate Number: 37368–480, FCI Herlong, Federal Correctional Institution, P.O. Box 800, Herlong, CA 96113, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''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, 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, reexport, or transfer (in-country) 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, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Villanueva-Valles by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Villanueva-Valles may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Villanueva-Valles and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 10, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21601 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Jose Luis Arevalo-Gonzalez, Inmte Number: 94655–479, MCFP Springfield, Federal Medical Center, P.O. Box 4000, Springfield, MO 65801

On January 6, 2020, in the U.S. District Court for the Southern District of Texas, Jose Luis Arevalo-Gonzalez (''Arevalo-Gonzalez'') was convicted of violating 18 U.S.C. 554(a). Specifically, Arevalo-Gonzalez was convicted of fraudulently and knowingly attempting to export from the United States to Mexico: one (1) Barret .50 caliber bolt; three (3) FA Cugir Romanian AK47; Seven (7) Century Arms VSKA AK47; one (1) Century Arms WASR AK47; and eighty-five (85) assorted magazines, all in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Arevalo-Gonzalez to 57 months in prison, three years of supervised release, and a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Arevalo-Gonzalez's conviction for violating 18 U.S.C. 554 and, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), has provided notice and opportunity for Arevalo-Gonzalez to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a submission from Arevalo-Gonzalez.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Arevalo-Gonzalez's export privileges under the Regulations for a period of 10 years from the date of Arevalo-Gonzalez's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Arevalo-Gonzalez had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until January 6, 2030, Jose Luis Arevalo-Gonzalez, with a last known address of Inmate Number: 94655–479, MCFP Springfield, Federal Medical Center, P.O. Box 4000, Spingfield, MO 68501, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''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, 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, reexport, or transfer (in-country) 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, pursuant to section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, the Denied Person may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Denied Person and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 6, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21602 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: John James Peterson, 49 S Dixie Hwy., Deerfield Beach, FL 33441

On November 14, 2019, in the U.S. District Court for the Southern District of Florida, John James Peterson (''Peterson'') was convicted of violating 18 U.S.C. 371. Specifically, Peterson was convicted of knowingly and intentionally conspiring and agreeing with others known and unknown to export from the United States to Argentina, defense articles, namely, AR–15 assault rifles parts without first obtaining the required export control licenses or written approval from the Department of State. As a result of his conviction, the Court sentenced Peterson to 11 months in prison, one year supervised release, and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Peterson's conviction for violating 18 U.S.C. 371. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Peterson to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

received a written submission from Peterson.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Peterson's export privileges under the Regulations for a period of five years from the date of Peterson's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Peterson had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 14, 2024, John James Peterson, with a last known address of 49 S Dixie Hwy., Deerfield Beach, FL 33441, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''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, 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, reexport, or transfer (in-country) 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, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Peterson by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Peterson may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Peterson and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 14, 2024.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–21599 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–830]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revoking the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) would likely lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of the Sunset Review'' section of this notice.

DATES: Applicable October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Jose Rivera, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2017, Commerce published the CVD order on rebar from Turkey.[1] On June 1, 2022, Commerce published the notice of initiation of the sunset review of the *Order*.[2] Commerce received a notice of intent to participate from the Rebar Trade Action Coalition and its individual members, Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Steel Dynamics, Inc., and Byer Steel (RTAC) (domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3]

On June 30, 2022, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We also received a substantive response from the Government of Turkey (GOT).[5]

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 82 FR 32531 (July 14, 2017) (*Order*).

[2] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 87 FR 33123 (June 1, 2022).

[3] *See* RTAC's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated June 15, 2022.

[4] *See* RTAC Letter, ''Substantive Response to Notice of Initiation,'' dated June 30, 2022.

[5] *See* GOT's Letter, ''Substantive Response of the Government of the Republic of Türkiye in the First

However, we did not receive a substantive response from any other respondent interested party in this proceeding, and no party requested a hearing.

On July 21, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) from Turkey. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decisions Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.*

Final Results of the Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* on rebar from Turkey would likely lead to the continuation or recurrence of countervailable subsidies at the following rates:

Producer and exporter	Subsidy rate (percent *ad valorem*)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S	15.99

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: September 29, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Rates Likely To Prevail
3. Nature of the Subsidies
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–21627 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DS–P

Sunset Review of the Countervailing Duly Order on Steel Concrete Reinforcing Bar,'' dated June 30, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2022'' dated July 21, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

Membership of the International Trade Administration Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Membership on the International Trade Administration Performance Review Board.

SUMMARY: The International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of ITA Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments and bonuses. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for ITA's Performance Review Board begins on October 5, 2022.

FOR FURTHER INFORMATION CONTACT: Christine Covington, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW, Room 50021, Washington, DC 20230, at (202) 482–2613.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the ITA Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other Performance management issues, such as pay adjustments and bonuses. The Appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Alex Villanueva, Senor Director, Career SES
2. James Maeder, Deputy Assistant Secretary for AD/CVD Operations Career SES
3. Isabel Hannah, Director for Facilities and Environmental Quality, OS Career SES
4. Veronica LeGrande, Chief, Human Resources Division, Bureau of the Census, Career SES
5. Octavia Saine, Chief Administrative Officer, OGC Career SES
6. Steven Presing, Executive Director for Anti-Dumping and Subsidies Policy and Negotiation Career SES
7. Jennifer Knight, Deputy Assistant Secretary for Textiles, Consumer goods and Materials, Non-Career SES
8. Ian Saunders, Deputy Assistant Secretary for Western Hemisphere, Career SES
9. Cara Morrow, Director of Policy, Non-Career SES
10. Cynthia Aragon, Director, Advocacy Center, ITA Non-Career SES
11. Praveen Dixit, Deputy Assistant Secretary for Trade Policy and Analysis, Career SES

Dated: September 30, 2022.

Christine Covington,

Human Resources Specialist, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary, Department of Commerce.

[FR Doc. 2022–21617 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC419]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) 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 meeting will be held on Wednesday, October 26, 2022, and Thursday, October 27, 2022, beginning at 9 a.m., both days.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; telephone: (617) 567–6789. Webinar registration information: *https://attendee.gotowebinar.com/register/5522208515876543248.* Call in information: +1 (415) 930–5321 Access Code: 557–716–863.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to review information provided by the Council's Groundfish Plan Development Team (PDT), results of the recent management track stock assessments and peer review. Using the Council's acceptable biological catch (ABC) control rules, recommend the overfishing levels (OFL) and the ABCs for each stock for fishing years 2023, 2024 and 2025 for the following stocks: Georges Bank (GB) haddock, Gulf of Maine (GOM) haddock, Southern New England/Mid-Atlantic yellowtail flounder, Cape Cod/GOM yellowtail flounder, GB winter flounder, GOM winter flounder, American plaice, white hake, pollock, and Atlantic halibut, and receive an update on the development of ABC control rule alternatives under consideration for the Northeast Multispecies (Groundfish) Fishery Management Plan. Also on the agenda is to review the information provided by the Council's Monkfish PDT, results of the recent management track stock assessment, and peer review, and recommend the overfishing levels (OFL) and the acceptable biological catches for the northern and southern monkfish management areas for fishing years 2023–2025 and recommend an approach for setting the discard deduction from the annual catch target for setting specifications for the monkfish fishery for fishing years 2023–2025. They will consider other business as 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 Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 30, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–21641 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Developing, Testing, and Evaluating Methods for Transitioning the Brief Vulnerability Overview Tool (BVOT) to NWS Weather Forecasting Office Operations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 06/17/2022 (87 FR 36465) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Developing, Testing, and Evaluating Methods for Transitioning the Brief Vulnerability Overview Tool (BVOT) to NWS Weather Forecasting Office Operations.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular (New information collection).

Number of Respondents: 140.

Average Hours per Response: Vulnerability Mapping: 1 hour; Background Interview: 1.5 hours (only being conducted with a sample of EMs, ~100); Trust Survey: 0.25 hours (once at the start of the study and one at the end of the study).

Total Annual Burden Hours: 120 hours.

Needs and Uses: This is a request for a new collection of information.

The data collection is sponsored by DOC/NOAA/National Weather Service (NWS)/Office of Science and Technology Integration (OSTI). Currently, NOAA lacks data and data collection instruments that can capture local, knowledge-based, weather hazard vulnerability information from NWS WFO meteorologists and their CWA-based core partners (especially, their county-based emergency managers (EMs). Without this vulnerability information, WFO-level meteorologists' situational awareness of the greatest concerns of and risks to local communities often suffer. In addition, during situations where a WFO must rely on a back-up office due to a WFO being affected by severe weather conditions (*e.g.,* having to shelter, losing power due to the impacts of a hurricane, tornado outbreak, etc.), back-up WFOs rarely have the situational awareness of the critical areas of concern to local core partners and, thus, are less able to communicate mission critical messaging to those core partners. Without this type of local vulnerability information, NOAA, and the NWS specifically, is limited in its ability to meet its mission of saving lives and property as outlined in the Weather Research and Forecasting Innovation Act of 2017 (especially Pub. L. 115–25 Sec. 405.d.1.A, 405.d.1.B, Sec 406.c.2.B). This effort aims to advance the Tornado Warning Improvement and Extension Program (TWIEP)'s goal to ''reduce the loss of life and economic losses from tornadoes through the development and extension of accurate, effective, and timely tornado forecasts, predictions, and warnings, including the prediction of tornadoes beyond one hour in advance (Pub. L. 115–25)''. This work addresses NOAA's 5-year Research and Development Vision Areas (2020–2026) Section 1.4 (FACETs). This effort also advances the NWS Strategic Plan (2019–2022) ''Transformative Impact-Based Decision Support Services (IDSS) and Research to Operations and Operations to Research (R2O/O2R). The BVOT would contribute to the NWS Weather Ready Nation (WRN) Roadmap (2013) Sections 1.1.1, 1.1.2, 1.1.3, 1.1.8, and 3.1.4. In addition, because the BVOT is ''hazard agnostic''—it is used to collect vulnerabilities based on different weather hazards and can be organized to display those vulnerabilities only related to those specific hazards that are relevant to an NWS WFO at any given moment—it can be seen to help advance a number of hazard-specific congressional laws including (but, not limited to) those related to tsunamis (Pub. L. 109–424 Sec. 5.b.4, 5.c.2, 5.c.3, Sec. 6; Public Law 115–25 Sec. 505.c.5.B and Sec. 505.d.1) and the recently introduced TORNADO Act (S.3817 Sec. 3.b.6.C).

This study will assess the feasibility of NWS WFOs working with their local core partners to collect local known vulnerability points associated with specific types of weather hazards in order to populate a simple (but agile) GIS shapefile that can be used to provide WFO-level meteorologists with situational awareness of the vulnerabilities of greatest concern in their CWAs. This vulnerability awareness tool—the Brief Vulnerability Overview Tool (BVOT)—has been designed by researchers at the University of Oklahoma's Center for Applied Social Research (CASR) and Center for the Analysis and Prediction of Storms (CAPS), and it would permit NWS WFOs to work closely with their core partners to collect initial vulnerability points and to update those points in a efficient manner that would require little training and little effort through the use of widely available, simple online data collection methods.

Research participants will include adult (age 18+) NWS WFO meteorologists and their core partners (primarily the county emergency managers (EMs)) from four WFOs around the country. Participants will be asked to participate in a number of background interviews. In addition, they will be asked to complete an online (Qualtrics) survey assessing the attachment, trust, and knowledge of WFO meteorologists and their core partners. This survey will be conducted pre-/post- study in order to identify changes over time. Participants will also be asked to contribute to and learn how to maintain and use a Brief Vulnerability Overview Tool (BVOT)—a GIS shapefile-based way of collecting and displaying local, *known* vulnerability points within the existing operational environment of NWS WFOs.

The creation of a BVOT provides a number of benefits over and above current efforts within the NWS. These include (1) improved situational awareness for NWS WFO meteorologists; (2) improved spatial awareness of vulnerabilities of greatest concerns to core partners can prompt and fine-tune messaging and DSS provided to these core partners; (3) improved spatial situational awareness for backup offices if an NWS WFO loses its capacity to operate; (4) improved training and orientation for meteorologists who are new to an NWS WFO; (5) providing a structured requirement for maintaining an evolving, ''living'' database of vulnerabilities that can be shared and equally accessed across the WFO and the NWS; and (6) providing opportunities to improve the trust, communication, and rapport between an NWS WFO and its core partners through the collaborative construction and periodic updating of the BVOT.

Affected Public: State, Local, or Tribal government.

Frequency: Once or twice during the study.

Respondent's Obligation: Voluntary.

Legal Authority: 15 U.S.C. Ch. 111, Weather Research and Forecasting Information.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–21582 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC423]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Budget Committee will hold a meeting to consider budget issues as outlined in the Budget Committee Agenda.

DATES: The online meeting will be held Wednesday, October 26, 2022 at 3 p.m. Pacific time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Patricia Crouse, Administrative Officer, Pacific Council; telephone: (503) 820–2408.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider and develop preliminary recommendations to the Pacific Council ahead of the November 2022 Pacific Council meeting, particularly the Fiscal Matters agenda item.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 30, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–21642 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC434]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee (MC) will hold a public meeting.

DATES: The meeting will be held on Wednesday, October 26, 2022 from 9 a.m. to 1 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar at *www.mafmc.org* prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass MC will meet to discuss considerations for developing 2023 recreational management measures for all three species. These discussions will inform additional analysis that will be conducted prior to another meeting of the MC in November. During this first meeting, the MC will review: (1) the Recreational Harvest Control Rule Percent Change Process approved by the Council in June 2022, (2) the results of the recently completed Summer Flounder Management Strategy Evaluation which explored strategies to reduce recreational discards, and (3) two recreational harvest estimation models that could be used to inform development of 2023 management measures. The MC will discuss the implications of these issues for development of 2023 recreational management measures, which will be further discussed at a subsequent MC meeting in November 2022.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

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

Dated: September 30, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–21643 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC433]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2022. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted early in 2023 and will be announced in a future notice. In addition, NMFS has implemented online recertification workshops for persons who have already taken an in-person training.

DATES: The Atlantic Shark Identification Workshops will be held on October 20, 2022 and December 1, 2022. The Safe Handling, Release, and Identification Workshops will be held on October 21, 2022, November 16, 2022, and December 1, 2022.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Mount Pleasant, SC and Largo, FL. The Safe Handling, Release, and Identification Workshops will be held in

Warwick, RI; Kitty Hawk, NC; and Manahawkin, NJ.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell by email at *craig.cockrell@noaa.gov* or by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries are managed under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan and its amendments are implemented by regulations at 50 CFR part 635. Section 635.8 describes the requirements for the Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops. The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are available online at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057, October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2019 will expire in 2022. Approximately 195 free Atlantic Shark Identification Workshops have been conducted since October 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate must be in any trucks or other conveyances that are extensions of a dealer's place of business.

Workshop Dates, Times, and Locations

1. October 20, 2022, 12 p.m.–4 p.m., Hampton Inn & Suites Isle of Palms Connector, 1104 Isle of Palms Connector, Mount Pleasant, SC 29464.
2. December 1, 2022, 12 p.m.–4 p.m., Hampton Inn & Suites Largo, 100 East Bay Dr., Largo, FL 33770.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at 386–852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057, October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2019 will expire in 2022. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited access permits. Additionally, new shark and swordfish limited access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 397 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to vessel owners, at least one operator on board vessels issued a limited access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits on which longline or gillnet gear is used.

Workshop Dates, Times, and Locations

1. October 21, 2022, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.
2. November 16, 2022, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 N Virginia Dare Trail, Kitty Hawk, NC 27949.
3. December 1, 2022, 9 a.m.–5 p.m., The Mainland Holiday Inn, 151 Rt. 72 East, Manahawkin, NJ 08070.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler

Conservation Education at 386–682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification; and
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Online Recertification Workshops

NMFS implemented an online option for shark dealers and longline and gillnet fishermen to renew their certificates in December 2021. To be eligible for online recertification workshops, dealers and fishermen need to have previously attended an in-person workshop. Information about the courses is available online at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.* To access the course please visit: *https://hmsworkshop.fisheries.noaa.gov/start.*

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

Dated: September 29, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–21548 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board; Meeting

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service (NTIS) Advisory Board (the Advisory Board).

DATES: The Advisory Board will meet on Wednesday, November 9, 2022 from 1:00 p.m. to approximately 4:30 p.m., Eastern Time, via teleconference.

ADDRESSES: The Advisory Board meeting will be via teleconference. Please note attendance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw, (703) 605–6136, *eshaw@ntis.gov* or Steven Holland at *sholland@ntis.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Advisory Board reviews and makes recommendations to improve NTIS programs, operations, and general policies in support of NTIS' mission to advance Federal data priorities, promote economic growth, and enable operational excellence by providing innovative data services to Federal agencies through joint venture partnerships with the private sector.

The meeting will focus on a review of the progress NTIS has made in implementing its data mission and strategic direction. A final agenda and summary of the proceedings will be posted on the NTIS website as soon as they are available (*https://www.ntis.gov/about/advisorybd/index.xhtml*).

The teleconference will be via controlled access. Members of the public interested in attending via teleconference or speaking are requested to contact Ms. Shaw at the contact information listed in the **FOR FURTHER INFORMATION CONTACT** section above not later than Wednesday, November 2, 2022. If there are sufficient expressions of interest, up to one-half hour will be reserved for public oral comments during the session. Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend are invited to submit written statements by emailing Ms. Shaw at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Gregory Capella,

Director (A).

[FR Doc. 2022–21569 Filed 10–4–22; 8:45 am]

BILLING CODE 3510–04–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 4, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be

obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entries for OMB Control Nos. 3038–0096 and 3038–0070, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Tom Guerin, Assistant Chief Counsel, Division of Market Oversight, at (202) 836–1933 or *tguerin@cftc.gov,* or Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418–5185 or *pchaffin@cftc.gov,* Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Title: ''Swap Data Recordkeeping and Reporting Requirements'' (OMB Control No. 3038–0096) and ''Real-Time Public Reporting'' (OMB Control No. 3038–0070). This is a request for revisions to currently approved information collections.

Abstract: Pursuant to section 2(a)(13)(G) of the Commodity Exchange Act (''CEA''), all swaps, whether cleared or uncleared, must be reported to SDRs.[2] CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.[3] Part 45 of the Commission's regulations implements the swap data reporting rules. Section 2(a)(13) of the CEA authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.[4] Part 43 of the Commission's regulations implements the real-time public reporting rules. Regulations 45.14 and 43.3(e) require that if a SEF, DCM, or reporting counterparty determines that it will fail to timely correct an error in swap data or swap transaction and pricing data, respectively, it shall notify staff of its determination that it will fail to timely correct the error.[5]

On June 10, 2022, DOD published a ''Swap Data Error Correction Notification Form,'' which sets out the form and manner for notifications pursuant to regulations 45.14 and 43.3(e) and enumerates information sufficient to provide an initial assessment of the scope of the error or errors that were discovered and any initial remediation plan for correcting the error or errors, if an initial remediation plan exists.[6] The Swap Data Error Correction Notification Form requests, among other things: (1) identifying information for the swap execution facility (''SEF''), designated contract market (''DCM''), or reporting counterparty making the notification; (2) clarification whether errors relate to previously reported and/or unreported swaps; (3) unique swap identifiers and/or unique transaction identifiers for transactions representative of the error or errors; (4) the asset classes to which the error or errors pertain; (5) the number of transactions impacted by the error or errors; (6) the percentage of the SEF, DCM, or reporting counterparty's reported swap transactions affected by the error and that percentage for each impacted asset class; (7) the date the SEF, DCM, or reporting counterparty discovered the error or errors and a description of how discovery came about; (8) an indication whether the issues underlying the error or errors are still producing new errors; and (9) any initial remediation plan or, if no initial remediation plan exists, an indication of when the SEF, DCM, or reporting counterparty expects to have a remediation plan. The Swap Data Error Correction Notification Form, which will be required for error data notifications after December 5, 2022, is appended to CFTC Letter 22–06 and is available as a stand-alone form on the Commission's website.[7]

As the Swap Data Error Correction Notification Form provides the form and manner and specifies sufficient information required to satisfy information collections under regulations 45.14 and 43.3(e), the Commission does not believe it imposes new information collection requirements beyond those adopted by the Commission in November 2020.[8] The information collection requirements under OMB Control Nos. 3038–0096 and Information Collection 3038–0070 are necessary to obtain information detailing the cause, nature, and scope of swap data errors.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On June 24, 2022, the Commission published in the **Federal Register** notice of the proposed revision of this information collection and provided 60 days for public comment on the proposed revision, 87 FR 37839 (''60-Day Notice''). The Commission received two relevant comments on the 60-Day Notice,[9] which are discussed below.

First, BSEF commented on aspects of the error correction notification process related specifically to SEFs. BSEF proposed that SEFs be permitted to submit the Swap Data Error Correction Notification Forms through the CFTC portal rather than via email, but did not specify any impact of this proposal on the Commission's burden estimate.[10] It also stated that it believes certain notifications related to open swaps that may be required by the Swap Data Error

[1] 17 CFR 145.9.

[2] 7 U.S.C. 2(a)(13)(G).

[3] See 7 U.S.C. 24a(b)(1)–(3).

[4] 7 U.S.C. 2(a)(13)(E).

[5] 17 CFR 45.14(a)(1); 17 CFR 43.3(e)(1). Commission regulations referred to herein are found at 17 CFR Ch. 1.

[6] See CFTC Letter 22–06.

[7] See Swap Data Error Correction Notification Form, available at *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_17_Recordkeeping/index.htm.*

[8] See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75633–75634 (Nov. 25, 2020).

[9] The following entities submitted a relevant comment letter: Bloomberg SEF LLC (''BSEF'') and BP Energy Company (''BPEC''). Other comments submitted did not concern the PRA burden for information collections under regulations 45.14 and 43.3(e).

[10] BSEF at 2.

Correction Notification Form will be impossible for a SEF to complete, as SEFs do not generally possess open swaps information.[11] BSEF suggests this would impose a new collection of information.[12] BSEF also stated it believed the Commission has underestimated the burden hours required by the information collection because, for a SEF, there may be multiple reports per year triggered by its participants.[13]

Second, BSEF and BPEC both commented on the timelines for error correction notifications. BSEF stated that the Swap Data Error Correction Notification Form should be revised to account for the fact that a remediation plan may not be available at the time the form is required to be filed.[14] BPEC stated that it may be difficult to complete the Swap Data Error Correction Notification Form within the twelve-hour timeframe provided in regulation 45.14(a)(1).[15] Both BSEF and BPEC also expressed concerns that notifying entities may make unintentional misstatements through the Swap Data Error Correction Notification Form if they are required to complete the Form within the timeframe provided in regulations 45.14 and 43.3(e).[16] Both BSEF and BPEC requested the Commission consider adopting a materiality threshold to trigger the requirement to answer some or all questions included in the Swap Data Error Correction Notification Form.[17]

Third, BPEC commented on certain of the questions included in the Swap Data Error Correction Notification Form. Specifically, BPEC stated that questions 3, 7, and 10 through 14 should be removed from the Swap Data Error Correction Notification Form, or applied only after a materiality threshold is met or after a longer time-frame.

The Commission has determined to retain the burden hour estimates described in the 60-Day Notice for the reasons described below. The Swap Data Error Notification Form specifies the form and manner for reporting in compliance with Commission regulations but does not impose new information collection obligations not already mandated by regulations 45.14 and 43.3(e).

First, the introduction of the Swap Data Error Correction Notification Form to implement regulations 45.14 and 43.3(e) does not impose new requirements on SEFs. With respect to BSEF's statements that SEFs should be permitted to submit Swap Data Error Correction Notification Forms through the CFTC Portal, many market participants do not have access to the CFTC Portal. Rather than receiving error notifications in a variety of formats, staff published the Swap Data Error Notification Form to ensure notifications are submitted in a uniform format and manner. BSEF also expressed concern that SEFs may be unable to submit the required notifications because they generally lack access to open swaps reports. BSEF's concern appears to be based not on any aspect of the Swap Data Error Correction Notification Form that is the subject of this notice, but rather on statements in CFTC Letter 22–06 that encourage general compliance with pre-existing error correction requirements.[18] Neither CFTC Letter 22–06 nor the Swap Data Error Correction Notification Form establish any independent requirement that a market participant review open swaps that differs from existing requirements in CFTC regulations. Finally, the Commission takes under advisement BSEF's prediction that, for a SEF, there could be multiple reports triggered per year. The frequency of reporting was previously subject to comment in 2019,[19] and the revisions to the information collection at issue in the notice of June 24, 2022 [20] do not alter that aspect of the Commission's burden estimates. Nonetheless, the Commission will continue to review reporting volumes and may revise its burden estimates if necessary following implementation of the new Form.

Second, the introduction of the Swap Data Error Correction Notification Form does not alter the timelines for reporting and correcting errors established by regulations 45.14 and 43.3(e). With respect to BSEF's statements regarding initial remediation plans,[21] the requirement that a notifying entity submit an initial remediation plan for correcting the error or errors, if an initial remediation plan exists, is established in regulations 45.14(a)(1)(ii) and 43.3(e)(1)(ii).[22] The Swap Data Error Correction Notification Form does not add to or alter any burden imposed by that requirement. Although BSEF and BPEC expressed concern about the timeline for required filings, the 12-hour period for filing error correction notices was adopted in regulations 45.14 and 43.3(e). When adopting the 12-hour reporting period, the Commission considered comments on the timeline for correcting errors and notifying the Commission, and extended the period to correct errors specifically ''to provide the entity making the correction a more accurate understanding of the scope of the error.'' [23] Similarly, BSEF and BPEC's statements with respect to a materiality threshold do not relate to the Swap Data Error Correction Notification Form, but rather to requirements established under regulations 45.14 and 43.3(e). The Commission previously considered comments on a materiality threshold and declined to adopt such a threshold.[24]

Third, the questions included in the Swap Data Error Correction Notification Form do not impose information collection obligations not previously required by regulations 45.14 and 43.3(e). With respect to questions 3 and 7, which seek unique swap identifiers or unique transaction identifiers representative of the error and information concerning the volume of swaps affected by the error, BPEC states that it will be difficult to provide this information within twelve hours of determining it will be unable to timely correct an error or errors.[25] However, in order for a notifying entity to determine it will be unable to timely correct an error, it must possess some information concerning the scope of that error. The

[11] BSEF at 2–4.

[12] BSEF at 2–4.

[13] BSEF at 5.

[14] BSEF at 4–5.

[15] BPEC at 2.

[16] BSEF at 4; BPEC at 3.

[17] BSEF at 5; BPEC at 3.

[18] See CFTC Letter 22–06, at 3 n.11. BSEF also encouraged the Commission to amend the Swap Data Error Notification Form to account for the fact that SEFs do not have access to open swap information. BSEF at 2–4. Because the Swap Data Error Notification Form does not refer to open swaps, however, it is unclear what amendment would be necessary to address BSEF's concern.

[19] See 85 FR 75633–75634. Moreover, the commenter's prediction that a particular SEF or SEFs may submit multiple Swap Data Error Correction Notification Forms in a single year is not inconsistent with the Commission's burden estimates. As the Commission previously noted, its burden estimate is based on analysis of the average number of error notifications per SEF, DCM, and reporting counterparty. *See id.* (stating that the Commission's estimate that each SEF, DCM, and reporting party will, on average, need to provide notice to the Commission once per year is based on analysis showing that ''currently, [the Commission] receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year. . . .'').

[20] Notice of Intent to Revise Collection 3038–0096 (Swap Data Recordkeeping and Reporting Requirements) and Collection 3038–0070 (Real-Time Public Reporting), 87 FR 37839 (June 24, 2022).

[21] BSEF Comment at 4–5.

[22] 17 CFR 45.14(a)(1)(ii); 17 CFR 43.3(e)(1)(ii).

[23] 85 FR 75629.

[24] See Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75628–629 (Nov. 25, 2020) (''The Commission similarly declines to accept recommendations to limit the scope of the error correction rules by adopting a materiality requirement. . . .'').

[25] BPEC at 3.

identification of representative affected swaps and the number of those swaps is necessary to specify the scope of an error or errors. Questions 10 through 14 seek a brief narrative description of the error; clarification whether the underlying issues are producing new errors; any initial or other remediation plan or, if none exists, an estimated date for an initial or other remediation plan; an indication whether the notifying entity has reviewed its swap reporting processes to identifying other potential reporting issues similar to that underlying the errors; and clarification whether the error impacted the notifying entity's reporting obligations under part 45, part 43, or both parts 45 and 43. BPEC states that because responding to these questions could raise compliance implications independent of the underlying swap data error, a reporting counterparty will be unable to complete questions 10 through 14 without legal review, senior level review, and IT support.[26] However, this information concerning the scope of the error or errors is necessary for staff to assess the impact of the error or errors, including the extent to which erroneous swap data has been disseminated to the public.

Burden Statement: The Commission estimates that the respondent burden for these collections is as follows:

• Collection 3038–0070 (Real-Time Reporting).

Respondents/Affected Entities: SEFs, DCMs, and reporting counterparties.

Estimated Number of Respondents: 1,742.

Estimated Average Burden Hours per Respondent: 6.[27]

Estimated Total Annual Burden Hours: 10,452.

Frequency of Collection: As needed.

The Commission does not anticipate any capital costs or annual operating and maintenance costs associated with this collection.

• Collection 3038–0096 (Swap Data Recordkeeping and Reporting Requirements).

Respondents/Affected Entities: SEFs, DCMs, and reporting counterparties.

Estimated Number of Respondents: 1,742.

Estimated Average Burden Hours per Respondent: 6.[28]

Estimated Total Annual Burden Hours: 10,452.

Frequency of Collection: As needed.

The Commission does not anticipate any capital costs or annual operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 29, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–21545 Filed 10–4–22; 8:45 am]

BILLING CODE 6351–01–P

[26] BPEC Comment at 2–3.

[27] The Commission estimates that each SEF, DCM, and reporting counterparty will, on average, need to provide notice to the Commission under regulation 43.3(e) once per year and that each instance will require 6 burden hours.

[28] The Commission estimates that each SEF, DCM, and reporting counterparty will, on average, need to provide notice to the Commission under regulation 45.14(a) once per year and that each instance will require 6 burden hours.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0069]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled ''Consumer Response Intake Form'' approved under OMB Number 3170–0011.

DATES: Written comments are encouraged and must be received on or before November 4, 2022 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Intake Form.

OMB Control Number: 3170–0011.

Type of Review: Revision of a currently approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,150,000.

Estimated Total Annual Burden Hours: 415,000.

Abstract: The Intake Form is designed to aid consumers in the submission of complaints, inquiries, and feedback and to help the Bureau fulfill its statutory requirements. Consumers (also referred to as respondents) will be able to complete and submit information through the Intake Form electronically on the Bureau's website. Alternatively, respondents may request that the Bureau mail a paper copy of the Intake Form and then mail it back to the Bureau or call to submit a complaint by telephone. The questions within the Intake Form prompt respondents for a description of, and key facts about, the complaint at issue, the desired resolution, contact and account information, information about the company they are submitting a complaint about, and previous action taken to attempt to resolve the complaint.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on May 24, 2022 (87 FR 31538) under Docket Number: CFPB–2022–0028. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All

comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–21640 Filed 10–4–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0068]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials'' approved under OMB Control Number 3170–0022.

DATES: Written comments are encouraged and must be received on or before December 5, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0068 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials.

OMB Control Number: 3170–0022.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 49,200.

Estimated Total Annual Burden Hours: 25,463.

Abstract: The Bureau will use this generic information collection for the development and testing of consumer financial disclosures and related materials. The research will result in recommendations for the development of and revisions to such disclosures and related materials. The research activities may be conducted by the Bureau or its contractors and will include cognitive psychological testing methods or quantitative evaluations. This approach has been demonstrated to be feasible and valuable by the Bureau and other agencies in developing disclosures and related materials. The Bureau will conduct planned research activities toward the goal of creating effective disclosures and related materials that will help consumers understand the features of consumer financial products and services.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–21639 Filed 10–4–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Diversity and Inclusion; Notice of Federal Advisory Committee

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Diversity and Inclusion (DACODAI) will take place.

DATES: Thursday, October 27, 2022, open to the public from 12:30 p.m. to 4:15 p.m. (EST).

ADDRESSES: The meeting will be held by videoconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION** ''Meeting Accessibility'').

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Raguindin, (571) 645–6952 (voice), *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* (email).

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DACODAI website *https://www.dhra.mil/DMOC/DACODAI.* Materials presented in the meeting may also be obtained on the DACODAI website.

Purpose of the Meeting: The purpose of the meeting is for the DACODAI to receive briefings and have discussions on topics related to racial/ethnic diversity, inclusion and equal opportunity within the Armed Forces of the United States.

Agenda: Thursday, October 27, 2022 from 12:30 p.m. to 4:15 p.m. (EST).

Welcome, Public Comment Review, Briefings, and DACODAI Discussions.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 12:30 p.m. to 4:15 p.m. (EST) on October 27, 2022. The meeting will be held by videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DACODAI at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or by contacting Ms. Shirley Raguindin at (571) 645–6952 no later than Monday, October 17, 2022 (by 5 p.m. EST). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Shirley Raguindin at *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil* or (571) 645–6952 no later than Monday, October 17, 2022 (by 5 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACODAI. Individuals submitting a written statement must submit their statement no later than 5 p.m. EST, Monday, October 17, 2022 to Ms. Shirley Raguindin at (571) 645–6952 (voice) or to *osd.mc-alex.ousd-p-r.mbx.dacodai@mail.mil.* If a statement is not received by Monday, October 17, 2022, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DACODAI during the October 27, 2022 meeting. The Designated Federal Officer will review all timely submissions with the DACODAI Chair and ensure they are provided to the members of the DACODAI.

Dated: September 30, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–21649 Filed 10–4–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its collection, titled Portfolio Analysis and Management System, OMB Control Number 1910–5178. The proposed collection streamlines the submission, tracking, and correspondence portions of financial award pre-review processes. The information collected is used by the DOE to select applicants and projects for financial awards.

DATES: Comments regarding this collection must be received on or before November 4, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to submit them as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

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 using the search function.

FOR FURTHER INFORMATION CONTACT: Courtney Bracey, Office of Information Science Management (SC–43), Office of Science, Department of Energy, GTN Building/E–180, 1000 Independence Avenue SW, Washington, DC 20585, Direct: (301) 903–1844 or by email at *Courtney.Bracey@science.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1910–5178.

(2) *Information Collection Request Title:* Portfolio Analysis and Management System.

(3) *Type of Request:* Extension.

(4) *Purpose:* This existing collection is based on the Health Resources and Services Administration (HRSA) Electronic Handbooks software. Discretionary financial assistance proposals continue to be collected using *Grants.gov* but are imported into PAMS for use by the program offices. Under the existing information collection, an external interface in PAMS allows two other types of proposal submission: DOE National Laboratories can submit proposals for technical work authorizations directly into PAMS, while other Federal agencies will be able to submit proposals for interagency awards directly into PAMS. External users from all institution types can submit Solicitation Letters of Intent and Pre-proposals directly into PAMS. All applicants, whether they submitted through *Grants.gov* or PAMS, can register with PAMS to view the submitted proposals. They also can maintain a minimal amount of information in their personal profile. The existing collection automates and streamlines the submission, tracking, and correspondence portions of financial award pre-review processes. The information collected is used by DOE to select applicants and projects for financial awards.

(5) *Annual Estimated Number of Respondents:* 35,365.

(6) *Annual Estimated Number of Total Responses:* 35,365.

(7) *Annual Estimated Number of Burden Hours:* 46,441.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $5,051,772.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251.

Signing Authority

This document of the Department of Energy was signed on September 29, 2022, by Asmeret Asefaw Berhe, Director, Office of Science, 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 September 30, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–21608 Filed 10–4–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act

requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 3, 2022, 6 p.m.–8 p.m.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

Attendees should check with the Board Support Manager (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Review of Agenda
- Administrative Issues
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, 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 Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5 p.m. ET on Monday, October 31, 2022 will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5 p.m. ET on Friday, November 11, 2022. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric Roberts at the telephone number listed above. Requests must be received as soon as possible 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. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signing Authority

This document of the Department of Energy was signed on September 29, 2022, by Shena Kennerly, Acting Committee Management Officer, 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 September 30, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–21609 Filed 10–4–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2950–000]

Vitol PA Wind Marketing 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 Vitol PA Wind Marketing 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 October 19, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21614 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2387–010; ER15–190–020; ER18–1343–013.

Applicants: Carolina Solar Power, LLC, Duke Energy Renewable Services, LLC, Duke Energy Florida, Inc.

Description: Amendment to July 28, 2022, Notice of Non-Material Change in Status of Duke Energy Florida, LLC, et al.

Filed Date: 9/27/22.

Accession Number: 20220927–5145.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER20–2101–002.

Applicants: Fern Solar LLC.

Description: Supplement to July 26, 2022, Notice of Non-Material Change in Status of Fern Solar LLC.

Filed Date: 9/27/22.

Accession Number: 20220927–5144.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–495–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–09–29_Compliance Seasonal Construct and Availability based accreditation to be effective 9/1/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5122.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2110–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 11/30/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5127.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2379–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3979SO Ponderosa Wind II GIA and Deficiency Response to be effective 7/12/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5060.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2951–000.

Applicants: Rivercrest Power-South, LLC.

Description: § 205(d) Rate Filing: Normal filing 2022 new name to be effective 9/29/2022.

Filed Date: 9/28/22.

Accession Number: 20220928–5144.

Comment Date: 5 p.m. ET 10/19/22.

Docket Numbers: ER22–2952–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Executed Engineering and Procurement Agreement between PNM and Sandia Peak Grid to be effective 9/1/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5001.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2953–000.

Applicants: Public Service Company of New Hampshire, ISO New England Inc.

Description: § 205(d) Rate Filing: Public Service Company of New Hampshire submits tariff filing per 35.13(a)(2)(iii: PNSH Establishment of Depreciation Rates for Account Nos. 357 and 358 to be effective 12/1/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5013.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2954–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6655; Queue No. AF2–138 to be effective 9/3/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5046.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2955–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–09–29 Ministerial Revisions to Att O–SPS to be effective 1/1/2023.

Filed Date: 9/29/22.

Accession Number: 20220929–5064.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2956–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–09–29 Tariff Clarifications—Price Corrections and Cluster 14 to be effective 11/29/2022.

Filed Date: 9/29/22.

Accession Number: 20220929–5075.

Comment Date: 5 p.m. ET 10/20/22.

Docket Numbers: ER22–2957–000.

Applicants: Ashtabula Wind I, LLC.

Description: Baseline eTariff Filing: Second Amended and Restated CFA with Otter Tail to be effective 1/2/2023.

Filed Date: 9/29/22.

Accession Number: 20220929–5080.

Comment Date: 5 p.m. ET 10/20/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21613 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–1244–000.

Applicants: Carlsbad Gateway, LLC.

Description: Petition for Approval of Settlement of Carlsbad Gateway, LLC.

Filed Date: 9/26/22.

Accession Number: 20220926–5118.

Comment Date: 5 p.m. ET 10/11/22.

Docket Numbers: RP22–1266–000.

Applicants: Energía de Baja California, S. de R.L. de C.V., ENERGIA DE BAJA CALIFORNIA, S, DE, RL DE CV.

Description: Complaint of Energía Azteca X, S.A. de C.V. and Energía de Baja California, S. de R.L. de C.V. v. North Baja Pipeline, LLC.

Filed Date: 9/29/22.

Accession Number: 20220929–5072.

Comment Date: 5 p.m. ET 10/04/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 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.

Dated: September 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21611 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–468–000]

Trailblazer Pipeline Company, LLC; Express Pipeline, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Trailblazer Conversion Project

On May 27, 2022, Trailblazer Pipeline Company, LLC (TPC) and Rockies Express Pipeline, LLC (REX) filed an application in Docket No. CP22–468–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and (c) of the Natural Gas Act to construct, operate, and abandon certain natural gas pipeline facilities. The proposed project is known as the Trailblazer Conversion Project (Project) and would provide continuing service to TPC's existing natural gas firm transportation customers using underutilized jurisdictional capacity on REX pipeline facilities while making TPC's pipeline facilities available, following their proposed abandonment, in anticipation of future non-jurisdictional use to transport carbon dioxide (CO_2) for final sequestration. The Project would not involve an increase in natural gas transportation capacity.

On June 9, 2022, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—March 31, 2023

90-day Federal Authorization Decision Deadline [2]—June 29, 2023

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

TPC is proposing to abandon certain natural gas pipeline facilities and associated compressor stations. REX is proposing to provide capacity on the existing REX Pipeline to TPC and construct, install, own, operate, and maintain certain facilities necessary for TPC to continue service to its existing customers. The Project would consist of the abandonment in-place of 392 miles of 36-inch-diameter TPC pipeline facilities and 3 TPC mainline compressor stations located in Colorado and Nebraska; construction of a new 18.8-mile-long, 20-inch-diameter lateral pipeline (REX Lateral to TPC Adams) located in Franklin, Webster, and Adams counties, Nebraska; construction of a new 22.2-mile-long, 36-inch-diameter lateral (REX Lateral to TPC East) located in Jefferson and Saline counties, Nebraska; construction of five new interconnect booster stations at existing TPC pipeline facilities in Nebraska and Colorado; and installation and modifications of meter stations and station piping in Nebraska.

Background

On July 11, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Trailblazer Conversion Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received multiple comments. Several were supportive of the Project. Others requested that the EA discuss and provide appropriate details regarding the Project description, purpose and need, alternatives, and resource impacts. The U.S. Environmental Protection Agency (EPA) recommends FERC include the proposed capture, transport, and sequestration of CO_2 as a connected action under NEPA. Additionally, EPA recommends FERC coordinate closely with the U.S. Army Corps of Engineers regarding regulatory changes associated with wetland permits, address potential air emission impacts under the general conformity rule, address potential spread of invasive species, and address impacts on environmental justice communities. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–468), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: September 29, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21637 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–63–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Winfield Storage Field Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Winfield Storage Field Abandonment Project (Project), proposed by ANR Pipeline Company (ANR) in the above-referenced docket. ANR requests authorization to abandon certain natural gas pipeline facilities in Montcalm County, Michigan.

The EA assesses the potential environmental effects of the Project abandonment activities in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Project includes the following activities and facilities:

- permanently plugging 72 natural gas injection/withdrawal wells;
- abandoning 15 miles of associated 4-inch, 6-inch, and 10-inch-diameter well lines in the storage field;
- abandoning 4.43 miles of the 16-inch-diameter Winfield Interconnect Storage Lateral (Lateral 249);
- abandoning by removal the Winfield Compressor Station, including all belowground and aboveground structures; and
- abandoning by removal all above-ground appurtenances and abandoning in-place all below ground appurtenances in the storage field.

The Commission mailed a copy of the *Notice of Availability of the Environmental Assessment* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–63–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on October 31, 2022.

For your convenience, there are three methods you can use to file your comments with the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP22–63–000) on your letter. 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: September 29, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–21636 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR22–69–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: § 284.123 Rate Filing: COH SOC Rates effective August 29 2022 to be effective 8/29/2022.
Filed Date: 9/27/22.
Accession Number: 20220927–5045.
Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: PR22–70–000.
Applicants: BBT Bamagas Intrastate, LLC.
Description: Pay fee; use etariff to file BBT Bamagas Intrastate, LLC.
Filed Date: 9/27/22.
Accession Number: 20220927–5041.
Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: PR22–70–000.
Applicants: BBT Bamagas Intrastate, LLC.
Description: § 284.123 Rate Filing: BBT Bamagas Intrastate Rate Filing to be effective 9/27/2022.
Filed Date: 9/27/22.
Accession Number: 20220927–5109.
Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: PR22–71–000.
Applicants: Boardwalk Texas Intrastate, LLC.
Description: § 284.123(g) Rate Filing: Petition for Section 311 Rate Approval to be effective 10/1/2022.
Filed Date: 9/28/22.
Accession Number: 20220928–5093.
Comment Date: 5 p.m. ET 10/19/22.

Docket Numbers: PR22–71–000.
Applicants: Boardwalk Texas Intrastate, LLC.
Description: Pay fee; use etariff to file Boardwalk Texas Intrastate, LLC.
Filed Date: 9/27/22.
Accession Number: 20220927–5103.
Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: RP22–1253–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing: Annual Report of Flow Through filed 9–28–22 to be effective N/A.
Filed Date: 9/28/22.
Accession Number: 20220928–5054.
Comment Date: 5 p.m. ET 10/11/22.

Docket Numbers: RP22–1254–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Update to GT&C Section 22 to be effective 10/28/2022.
Filed Date: 9/28/22.
Accession Number: 20220928–5061.
Comment Date: 5 p.m. ET 10/11/22.

Docket Numbers: RP22–1255–000.
Applicants: Cimarron River Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Tracker—2022 Winter Season Rates to be effective 11/1/2022.
Filed Date: 9/28/22.
Accession Number: 20220928–5097.
Comment Date: 5 p.m. ET 10/11/22.

Docket Numbers: RP22–1256–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Cash-Out Refund Tolerance to be effective 11/1/2022.
Filed Date: 9/28/22.
Accession Number: 20220928–5119.
Comment Date: 5 p.m. ET 10/11/22.

Docket Numbers: RP22–1257–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—CEC—VNG—Emporia Facilities Surcharge to be effective 11/1/2022.
Filed Date: 9/28/22.
Accession Number: 20220928–5132.
Comment Date: 5 p.m. ET 10/11/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 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.

Dated: September 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21612 Filed 10–4–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0094–0094; FRL–10214–01–OAR]

Proposed Information Collection Request; Comment Request; Information Collection for Importation of On-Highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment; EPA ICR Number 2583.03, OMB Control Number 2060–0717

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an Information Collection Request (ICR) ''Importation of On-highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the current ICR, which is approved through July 31, 2023. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 5, 2022.

ADDRESSES: Submit your comments referencing Docket ID No. EPA–HQ–OAR–2016–0094 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4288; fax number: 734–214–4869; email address: *pugliese.holly@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Air Act requires that on-highway vehicles and motorcycles, and nonroad vehicles, engines and equipment imported into the U.S. either comply with applicable emission requirements or qualify for an applicable exemption or exclusion. The Compliance Division (CD) in the EPA's Office of Air and Radiation maintains and makes available instruments to importers to help facilitate importation of products at U.S. borders. EPA Form 3520–1 is used by importers of on-highway vehicles and motorcycles, and EPA Form 3520–21 is used by importers of nonroad vehicles, engines and equipment.

For most imports, U.S. Customs and Border Protection (CBP) regulations require that EPA Declaration Forms 3520–1 and 3520–21 be filed with CBP at the time of entry. EPA makes both forms available on our website in fillable PDF format (*http://www.epa.gov/importing-vehicles-and-engines/publications-and-forms-importing-vehicles-and-engines*). EPA does not require that the forms be submitted directly to EPA. Rather, these forms are used by CBP to facilitate the importation process at U.S. borders. EPA does require that the forms be kept by importers for a period of five years after importation to assist EPA's Office of Enforcement and Compliance Assurance (OECA) and CBP should any issues arise with any given importation.

In addition, this ICR covers the burden of EPA Form 3520–8 which EPA makes available upon request and is used by Independent Commercial Importers (ICIs), who bring on-highway vehicles into compliance and provide emissions test results, to request final importation clearance for their on-highway vehicles.

Since 2016, CBP has been using the Automated Commercial Environment (ACE) to facilitate the electronic filing of imports documents rather than collecting paper. ACE has become the primary system through which the trade community and other importers report imports and exports. Through ACE as the single point of submission, manual processes have been streamlined and automated, and paper submissions (*e.g.,* fillable PDFs) have been significantly reduced. The information detailed on both EPA forms has been incorporated into ACE. Rather than file hard copy forms, importers will log into ACE and check boxes that correspond to information elements currently found on the forms. Filers using the ACE interface will also receive transaction information that will be kept by the filer. However, EPA will continue to maintain the forms on our website in fillable PDF format. Although importers are expected to use the ACE interface to submit information, the PDF versions of the form can also be submitted directly into ACE by importers.

Form Numbers: 3520–1, 3520–21, 3520–8.

Frequency of response: Once per entry. (One form per shipment may be used.)

Respondents/affected entities: Information collected is from individual importers, or companies who import and/or manufacture on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment.

Respondent's obligation to respond: Required for any importer to legally import on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment vehicles or engines into the U.S.

Estimated number of respondents: 14,810.

Total estimated burden: 81,985 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $8,009,549 (per year).

Changes in estimates: The number of entries (forms filed with CBP) has increased from approximately 160,000 per year to approximately 260,000 per year. Therefore, the total estimated cost has increased by approximately $3,764,850 compared with the ICR currently approved by OMB. This is due to the increased number of forms filed and a slight increase in labor costs. Total burden hours remain unchanged.

Byron Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2022–21589 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0437; FRL 10182–01–OAR]

Proposed Information Collection Request; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)'' (EPA ICR No. 0116.1, OMB Control No. 2060–0060) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2023. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 5, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0437, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under Section 206(a) of the Clean Air Act (42 U.S.C. 7521), on-highway engine and vehicle manufacturers may not legally introduce their products into U.S. commerce unless EPA has certified that their production complies with applicable emission standards. Per section 207(a), original vehicle manufacturers must warrant that vehicles are free from defects in materials and workmanship that would cause the vehicles not to comply with emission regulations during their useful life. Section 207(a) directs EPA to provide certification to those manufacturers or builders of automotive aftermarket parts that demonstrate that the installation and use of their products will not cause failure of the engine or vehicle to comply with emission standards. An aftermarket part is any part offered for sale for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer's production line (40 CFR 85.2113(b)). Participation in the aftermarket certification program is voluntary. Due to the fact that EPA has received only two aftermarket part certification applications since 1989, the Agency does not expect to receive any applications in the next three years. The purpose of this ICR renewal is to preserve EPA's authority to receive such an application in the event that one is submitted. Consequently, for the purposes of this information collection request, EPA has assumed that one manufacturer will apply for aftermarket part certification during the three-year period covered by this collection.

Aftermarket part manufacturers or builders (manufacturers) electing to participate conduct emission and durability testing as described in 40 CFR part 85, subpart V, and submit data about their products and testing procedures. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in CFR title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2).

Form Numbers: None.

Respondents/affected entities: Manufacturers or builders of automotive aftermarket parts.

Respondent's obligation to respond: Required to obtain or retain a benefit.

Estimated number of respondents: 1 (total).

Frequency of response: On occasion.

Total estimated burden: 547 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $37,208 (per year), includes $1,955 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Byron Bunker,

Director, Compliance Division.

[FR Doc. 2022–21595 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10240–01–OA]

Notification of a Public Meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC) and CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered Clean Air Scientific Advisory Committee (CASAC) and CASAC Ozone Review Panel to discuss a draft CASAC report on EPA's 2020 Ozone Integrated Science Assessment (ISA).

DATES: The public meeting will be held on November 14, 2022, from 11:00 a.m. to 3:00 p.m. and November 15, 2022, from 11:00 a.m. to 3:00 p.m. All times listed are in Eastern Time.

ADDRESSES: The meeting will be conducted virtually. Please refer to the CASAC website at *https://casac.epa.gov* for details on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone at (202) 564–2050 or via email at *yeow.aaron@epa.gov.* General information concerning the CASAC, as well as any updates concerning the meetings announced in this notice can be found on the CASAC website: *https://casac.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As

amended, 5 U.S.C., app. section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2, and conducts business in accordance with FACA and related regulations. The CASAC and the CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC and CASAC Ozone Review Panel will hold a public meeting to discuss a draft CASAC report on EPA's 2020 Ozone ISA.

Technical Contacts: Any technical questions concerning EPA's 2020 Ozone ISA should be directed to Dr. Steven Dutton (*dutton.steven@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC website: *https://casac.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by November 7, 2022, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by November 7, 2022. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact the DFO, at the contact information noted above, preferably at least ten days prior to each meeting, to give EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2022–21596 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0751; FRL–10243–01–OCSPP]

Pesticide Registration Review; Proposed Revisions to the Proposed Interim Decision for Methomyl; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed revisions to the proposed interim registration review decision and opens a 60-day public comment period on the proposed revisions to the proposed interim decision for methomyl.

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0751, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, please contact the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for methomyl (Table 1). Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of methomyl pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed revision to the proposed interim registration review decision for methomyl and opens a 60-day public comment period on the proposed revisions to the proposed interim registration review decision.

TABLE 1—METHOMYL REGISTRATION REVIEW DOCKET DETAILS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Methomyl; Case Number 0028	EPA–HQ–OPP–2010–0751	Rachel Eberius, *eberius.rachel@epa.gov*, (202) 566–2223.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of methomyl, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. The proposed revisions to the proposed interim registration review decision are supported by the rationales included in those documents. Following public comment, the Agency will issue an interim or final registration review decision for methomyl.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed revisions to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the methomyl registration review docket. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 29, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–21619 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0794; FRL–10225–01–OAR]

Request for Information: Better Indoor Air Quality Management To Help Reduce COVID–19 and Other Disease Transmission in Buildings: Technical Assistance Needs and Priorities To Improve Public Health

AGENCY: Environmental Protection Agency, Office of Radiation and Indoor Air.

ACTION: Request for information through public comment.

SUMMARY: Through this Request for Information (RFI), the Environmental Protection Agency (EPA) seeks to promote and advance the widespread adoption of actions that lead to improvements in indoor air quality (IAQ) in the nation's building stock to help mitigate disease transmission (*e.g.,* COVID–19). The agency is announcing a 60-day public comment period to solicit information and recommendations from a broad array of individuals and organizations with knowledge and

expertise relating to the built environment and health, indoor air quality, epidemiology, disease transmission, social sciences and other disciplines. EPA will analyze information received from this RFI to consider and support the potential development, improvement, and implementation of technical assistance efforts (*e.g.,* information, tools, training, guidance) and other strategies (*e.g.,* incentives, recognition efforts) to support IAQ related improvements in the nation's building stock, with a particular emphasis on schools and commercial buildings.

DATES: Comments may be submitted on or before December 5, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0794 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0794 in the subject line of the message.
- *U.S. Postal Service Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2022–0794 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alisa Smith, Office of Radiation and Indoor Air/Indoor Environments Division (*smith.alisa@epa.gov,* 202–343–9372) or Ray Lee, Office of Radiation and Indoor Air/Radiation Protection Division (*lee.raymond@epa.gov,* 202–343–9463).

SUPPLEMENTARY INFORMATION: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0794, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

You do not need to address every question and should focus on those where you have relevant expertise or experience. In your comments, please provide a brief description of yourself and your role or organization before addressing the question. Please identify the question(s) you are responding to by question number when submitting your comments.

1.0 Background

The Clean Air in Buildings Challenge

In March 2022, the Biden-Harris Administration launched the Clean Air in Buildings Challenge, a key component of the President's National COVID–19 Preparedness Plan. The Clean Air in Buildings Challenge is a call to action and a set of guiding principles and best practices to encourage and assist building owners and operators with reducing risks from airborne viruses and other contaminants indoors through the improvement of indoor air quality. The Clean Air in Buildings Challenge highlights a range of recommended best practices and resources for improving ventilation, filtration, air cleaning and indoor air quality in buildings, which can help to better protect the health of building occupants and reduce the risk of COVID–19 spread. The Administration invited and encouraged all building owners and managers—and organizations of all kinds—to take action based on the Clean Air in Buildings Challenge best practices guide.

To further promote awareness of and participation in the Clean Air in Buildings Challenge, the Administration also committed to identify ways to recognize leaders in this effort including organizations, building owners, managers, and operators across sectors and around the country for steps they take to improve ventilation, filtration, and indoor air quality to protect and promote public health. The intent of such recognition would be to provide one means to increase and sustain awareness of the need to improve ventilation and indoor air quality in our nation's buildings to protect public health, and to acknowledge individuals and organizations that have taken these actions and inspire others to do so while leveraging the National COVID–19 Preparedness Plan and the Clean Air in Buildings Challenge.

Ventilation, filtration, and air cleaning in buildings are essential components of a multilayered approach to preventing disease transmission, including COVID–19.

There are straightforward steps that can be taken to reduce the potential for airborne transmission of COVID–19.[1] The layout, design, and operation of a building, including the operation of the heating, ventilation, and air conditioning (HVAC) system, as well as occupant behaviors, can all impact the potential airborne spread of COVID–19 in that building. Although improvements to ventilation, filtration and air cleaning cannot on their own eliminate the risk of airborne transmission of the virus, increasing ventilation with outdoor air accompanied by air filtration and air cleaning are important components of a layered prevention strategy to reduce the spread of COVID–19 and promote the overall health of building occupants. Additional components of a layered COVID–19 prevention strategy may include vaccination, physical distancing, wearing masks, and other precautions.

Significant public health gains can be achieved by improving building ventilation and filtration.

Well managed IAQ is a critical component of the pandemic response and has multiple co-benefits. Improvements in ventilation, filtration, air cleaning and other indoor air quality parameters are important for the multiple health impacts they achieve; such actions also support important performance, productivity, and economic benefits.[2] For example, increases in classroom ventilation rates are associated with improvements in student performance.

[1] *https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19.*

[2] *https://iaqscience.lbl.gov/.*

Challenges and opportunities for improving IAQ in buildings—What we've learned to date.

The Administration and Congress have taken unprecedented steps to ensure that funding is available to support the pandemic response. This includes funding through the American Rescue Plan which provided $122 billion to schools and billions more to state, local, and tribal governments which they may use, among other uses of the funds, to support indoor air quality improvements in schools, small businesses, industrial settings, commercial buildings, low-income housing, and transportation hubs.[3]

School decision makers are implementing HVAC improvements as one means to help reduce the spread of COVID–19 and remain open for in person learning. CDC recently published the results of the National School COVID–19 Prevention Study, an assessment of ventilation practices in schools.[4] This study found ''the most common reported ventilation improvement strategies by schools were lower-cost strategies, including relocating activities outdoors (74%), inspecting and validating existing HVAC systems (71%), and opening doors (67%) or windows (67%) when safe to do so. Fewer schools reported more resource-intensive strategies such as replacing or upgrading HVAC systems (39%) or using HEPA filtration systems in classrooms (28%) or eating areas (30%). Rural and mid-poverty schools were less likely to report implementing several resource-intensive strategies.'' Professional organizations, HVAC-related industries, trade unions, and others are reporting they are mobilizing their resources to help improve building assets, operations, and services to improve indoor air quality. Anecdotally, some school representatives are reporting that they face challenges implementing improvements that require professional services because they have not yet been able to efficiently secure qualified workers in a timely manner.

While recent assessments of the use of federal funds to support ventilation and other indoor air quality improvements show encouraging action, there remains important work to do to help schools and other buildings to improve indoor air. Public health initiatives that inform the public about indoor air quality have proven impacts. The EPA environmental tobacco smoke risk assessment provided critical public health information that led to significant improvements to IAQ through state, local, and private smoke-free policies and practices in buildings. The Coordinated Federal Action Plan to Reduce Racial and Ethnic Asthma Disparities has focused support for community-level interventions on the preventable factors, including indoor environmental exposures, that underlie persistent and pervasive disparities in asthma outcomes. The National Radon Action Plan spearheaded by EPA in collaboration with other Federal agencies and leading not-for-profit organizations has mobilized a unique public-private partnership to prevent lung cancer deaths from avoidable radon exposure in homes and schools. And State weatherization assistance programs, supported with Federal funds, have linked energy efficiency with IAQ protective measures such as mold and moisture management, to deliver healthier homes for thousands of low-income families. The opportunity exists now to scale up proven practices, fast track innovative research and development, and mobilize public and private assets to make sustained improvements to indoor air quality, reduce COVID–19 risk, and improve school and workplace health and safety.

2.0 Request for Information

Through this RFI, EPA is seeking input from a diverse array of stakeholders (*e.g.,* building owners and operators, HVAC professionals, engineers, building and construction contractors, academics, architects, industrial hygienists, managers, researchers, Federal, State, Tribal and local government representatives, school and school district leaders and facility managers, industry, philanthropists, non-governmental organizations and the public at large) about actions, strategies, tools and approaches that support ventilation, filtration and air cleaning improvements, and other actions that would promote sustained improvements in indoor air quality in the nation's building stock to help mitigate disease transmission.

Responses to this RFI will inform ongoing and future efforts by EPA and others to support both the implementation and the sustainability of proven indoor air quality risk reduction measures with a special focus on activities that will address those aspects of building operations that can reduce disease transmission indoors.

EPA is particularly interested in feedback about current opportunities and priorities that can be implemented quickly and with existing resources. We are also interested in needs, tools, training, and other approaches that will lead to sustainable, systems-based improvements in the nation's building stock over the longer term and any obstacles and how they may be addressed. This RFI is for informational gathering purposes only and should not be construed as a solicitation or as an obligation on the part of EPA.

3.0 Key Questions

3.1 In your opinion, what approach(es) could the Federal government consider deploying to move decision makers/owners/managers toward making and sustaining improved ventilation, filtration, and air cleaning practices to reduce the risk of disease transmission?

- What could these efforts look like (*e.g.,* awareness campaigns, job training programs, voluntary labeling or other recognition programs, financial incentives, rebate programs)?
- How might these efforts function (*e.g.,* public-private partnership, expansion of existing public and or private programs)?
- Who are the stakeholders for action (general public, industry, government, academia, public health professionals, schools, commercial building owners, faith-based community, special-interest organizations)?
- What technical assistance, tools, resources, and/or guidance is needed by stakeholders?

3.2 In your opinion, what are the near-term indoor air quality related actions that could help schools respond to a COVID–19 disease surge?

- What specific supports for improving indoor air quality could be helpful to the school community?
- In addition to Federal tools, guidance, and funding resources, what other stakeholders are in a position or have assets that can help schools address IAQ issues?
- What approaches could a school system consider if they are willing and able to make IAQ changes but are having difficulty securing labor or supplies to complete their improvements?

3.3 In your opinion, over the longer term, how can ventilation, filtration and air cleaning improvements be prioritized and made standard practices in building design, construction, commissioning, renovation, and operations and maintenance efforts (*e.g.,*

[3] Dowell D, Lindsley WG, Brooks JT. Reducing SARS–CoV–2 in Shared Indoor Air. *JAMA.* Published online June 07, 2022. doi:10.1001/jama.2022.9970.

[4] Pampati S, Rasberry CN, McConnell L, et al. Ventilation Improvement Strategies Among K–12 Public Schools—The National School COVID–19 Prevention Study, United States, February 14–March 27, 2022. MMWR Morb Mortal Wkly Rep 2022; 71:770–775. DOE: *http://dx.doi.org/10.15585/mmwr.mm7123e2.*

building code adoption, training or other efforts to sustain proper practices such as operation and maintenance of HVAC systems as designed, weatherization and other retrofit programs)?

• What policies and or practices need to be put in place to support such efforts?

• Who can take these actions?

• What tools and technical assistance are needed?

• What are the obstacles to implementing appropriate upgrades to HVAC systems, in schools in particular?

3.4 In your opinion, what is an effective approach for a building recognition program (*e.g.,* pledge campaign, performance tiers, certification program)?

• What do you think are the primary incentives for decision makers to invest in ventilation, filtration, and air cleaning improvements and upgrades?

• What are the obstacles that decision makers may be facing?

• What approaches can help ensure buildings and organizations of all types can participate in a building recognition program?

• How can equity be integrated into a building recognition program so that it recognizes various types of significant improvements while taking into consideration diversity in the quality of existing buildings and differences in available financial resources? Could tiered recognition help address this equity consideration and what tiering approach should be considered?

3.5 In your opinion, what are key characteristics of a building recognition program that would be needed to document credible efforts toward improved ventilation, filtration, and air cleaning in buildings?

• What would be the principal IAQ parameters, measures, or other characteristics that could be included?

• How could these parameters, measures or other characteristics be assured or verified?

• What are ways to effectively recognize organizations that have taken action across a large portion of their building stock or occupied spaces within their buildings and or expended significant resources in their efforts?

• How frequently would a building need to be re-certified?

• What else could be noted about a building recognition, labeling or certification program?

3.6 In your opinion, what quantifiable metrics or targets could be helpful in evaluating or assessing ventilation, filtration, and air cleaning parameters in a building?

• What types of tools or technologies could support real time assessment of ventilation, filtration and or air cleaning parameters in a building?

• What qualitative or quantitative features could be helpful in assessing or describing ventilation, filtration, and air cleaning parameters in a building?

3.7 In your opinion, what changes would you recommend to the Clean Air in Buildings Challenge best practices document to improve public engagement and participation by a broad set of stakeholders?

3.8 In your opinion, how might lessons from the COVID pandemic be useful for long-term efforts to improve ventilation, filtration, air cleaning and other indoor air quality parameters in the nation's building stock?

3.9 What else would you like to note about opportunities and issues that could improve indoor air quality in the nation's building stock?

Authority: Title IV of the Superfund Amendments and Reauthorization Act (SARA); Title III Toxic Substances Control Act (TSCA); Clean Air Act (CAA).

Jonathan D. Edwards,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2022–21590 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1226; FR ID 107330]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and 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. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 5, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1226.

Title: Receiving Written Consent for Communication with Base Stations in Canada; Issuing Written Consent to Licensees from Canada for Communication with Base Stations in the U.S.; Description of Interoperable Communications with Licensees from Canada.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local, or Tribal government agencies.

Number of Respondents and Responses: 3,215 respondents; 3,215 responses.

Estimated Time per Response: 0.5 hours–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Written consent from the licensee of a base station repeater is required before first responders from the other country can begin communicating with that base stations repeater. Applicants are advised to include a description of how they intend to interoperate with licensees from Canada when filing applications to operate under any of the scenarios described in Public Notice DA 16–739 in order to ensure that the application is not inadvertently rejected by Canada. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319,

325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

Total Annual Burden: 5,626 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Applicants who include a description of how they intend to interoperate with licensees from Canada need not include any confidential information with their description. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as an extension of an existing collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring an agency to issue written consent before allowing first responders from the other country to communicate with its base station repeater ensures to that the licensee of that base stations repeater (host licensee) maintains control and is responsible for its operation at all times. The host licensee can use the written consent to ensure that first responders from the other country understand the proper procedures and protocols before they begin communicating with its base station repeater. Furthermore, when reviewing applications filed by border area licensees, Commission staff will use any description of how an applicant intends to interoperate with licensees from Canada, including copies of any written agreements, in order to coordinate the application with Innovation, Science and Economic Development Canada (ISED) and reduce the risk of an inadvertent rejection by ISED.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–21622 Filed 10–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 22–1021; FR ID 107256]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing a meeting of the North American Numbering Council (NANC).

DATES: February 28, 2023. The meeting will come to order at 2 p.m.

ADDRESSES: The meeting will be conducted via video conference and available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at *christi.shewman@fcc.gov* or 202–418–0646. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC meeting is open to the public on the internet via live feed from the FCC's web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237. This is a summary of the Commission's document in CC Docket No. 92–237, DA 22–1021, released September 27, 2022.

Proposed Agenda: At the February 28, 2023 meeting, the NANC will consider and vote on a report and recommendations from the Numbering Administration Oversight Working Group on the Feasibility of Individual Telephone Number Pooling Trials and Other Options for Numbering Resource Conservation. The agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officer (DFO).

(5 U.S.C. app 2 section 10(a)(2))

Federal Communications Commission.

Pamela Arluk,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2022–21629 Filed 10–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0250; FR ID 107128]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC 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 PRA comments should be submitted on or before December 5, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Costs: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1207 require that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

The information collection requirements contained in 47 CFR 74.784(b) require that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

Lastly, the information collection requirements contained in 47 CFR 74.1284 require that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–21621 Filed 10–4–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–26]

Philip Reinisch Company LLC, Complainant v. Flexport International LLC, Respondent; Notice of Filing of Complaint and Assignment

Served: September 29, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Philip Reinisch Company LLC., hereinafter ''Complainant,'' against Flexport International LLC., hereinafter ''Respondent.'' Complainant states that it is a company registered in Indiana. Complainant identifies the Respondent as a non-vessel-operating common carrier registered in Delaware with its principal office located in San Francisco, California.

Complainant alleges that Respondent violated 46 U.S.C. 41104(a)(15) and 41104(d) regarding the issuance of invoices without required information and the assessment of detention and demurrage charges. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-26/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by September 29, 2023, and the final decision of the Commission shall be issued by April 12, 2024.

William Cody,

Secretary.

[FR Doc. 2022–21562 Filed 10–4–22; 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 4, 2022.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent

electronically to *Comments.applications@clev.frb.org:*

1. *Racine HNB, Inc., Racine, Ohio;* to become a bank holding company by acquiring Home National Bank, Racine, Ohio.

B. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Barwick Bancorp, Inc., St. Augustine, Florida;* to become a bank holding company by acquiring Barwick Banking Company, Barwick, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–21648 Filed 10–4–22; 8:45 am]

BILLING CODE 6210–01–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 ''Medical Expenditure Panel Survey (MEPS) COVID–19 Changes.'' This proposed information collection was previously published in the **Federal Register** on July 11, 2022 and allowed 60 days for public comment. AHRQ received one comment from The Bureau of Economic Analysis (BEA) in strong support of the questions for this proposed data collection. 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 4, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

''*Medical Expenditure Panel Survey (MEPS) COVID–19 Changes.*''

The Medical Expenditure Panel Survey (MEPS) consists of the following three components and has been conducted annually since 1996:

- *Household Component (MEPS–HC):* A sample of households participating in the National Health Interview Survey (NHIS) in the prior calendar year are interviewed 5 times over a 2 and one-half (2.5) year period. These 5 interviews yield 2 years of information on use of, and expenditures for, health care, sources of payment for that health care, insurance status, employment, health status and health care quality.
- *Medical Provider Component (MEPS–MPC):* The MEPS–MPC collects information from medical and financial records maintained by hospitals, physicians, pharmacies and home health agencies named as sources of care by household respondents.
- *Insurance Component (MEPS–IC):* The MEPS–IC collects information on establishment characteristics, insurance offerings and premiums from employers. The MEPS–IC is conducted by the Census Bureau for AHRQ and is cleared separately.

This request is for the MEPS–HC only. The OMB Control Number for the MEPS–HC and MEPS–MPC is 0935–0118, which was last approved by OMB on November 18, 2020, and will expire on November 30, 2023.

The purpose of this request is to update questions related to COVID–19 in MEPS. New round 1 questions on COVID–19 capture information on whether household members have ever had COVID–19 and when they most recently had COVID–19. Follow-up questions in later rounds determine if household members have had COVID–19 in the interview reference period.

This study is being conducted by AHRQ through its contractors, Westat and RTI International, 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 cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b–2.

Method of Collection

The questions will be asked of all MEPS sample members with a single household respondent reporting for the household. The first two questions serve as gate questions and only respondents who report having a COVID–19 diagnosis in the relevant time period will receive follow-up questions about the timing of their most recent infection. These questions will be administered in the existing Priority Conditions Enumeration section of MEPS, which includes a similar series of questions about whether household members have ever been diagnosed with certain medical conditions.

Historically, MEPS has been conducted using Computer Assisted Personal Interviewing (CAPI) where field interviews conduct interviews with household respondents in person. However, MEPS is currently being conducted via multiple modes, including face-to-face, phone, and virtual interviewing, due to the ongoing COVID–19 pandemic.

The information collected on COVID–19 diagnoses will undergo editing and be reviewed for data quality, including consistency with publicly available sources of data on COVID–19 infections. Additionally, the resulting variables will be included on the annual MEPS full-year consolidated public use data files after being assessed for any potential disclosure concerns. The new CAPI questions collecting information about COVID–19 will be folded into the regular processing stream of MEPS data to produce estimates of health care utilization and expenditures. The information collected on COVID–19 diagnoses will be used to compare healthcare utilization and expenditures between those who have had confirmed COVID–19 and those who have not. Additionally, the information collected on the timing of recent infections can be used to either include or exclude recent infections from calendar year or round-specific estimates of healthcare utilization and expenditures. This allows researchers to examine both shorter-term and longer-term impacts of a COVID–19 diagnosis on healthcare utilization and expenditures.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for respondents' time to participate in this research. The addition of several questions related to COVID–19 adds minimal burden in hours and costs to the core CAPI interview, estimated to add 1 minute per interview and a total of 222 burden hours.

Exhibit 2 shows the estimated annualized cost burden associated with respondents' time to participate in this

research. The total cost burden is estimated to be $6,218 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
COVID–19 questions included in the MEPS questionnaire	13,338*	1	1/60	222

*While the expected number of responding units for the annual estimates is 12,804, it is necessary to adjust for survey attrition of initial respondents by a factor of 0.96 (13.338=12/804/0.96).

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
COVID–19 questions included in the MEPS questionnaire	13,338	222	$28.01	$6,218

*Based upon mean hourly wage, ''May 2021 National Occupational Employment and Wage Estimates United States,'' U.S. Department of Labor, Bureau of Labor Statistics, retrieved at *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

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: September 29, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–21624 Filed 10–4–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10260 & CMS–10142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 5, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10260—Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3).

CMS–10142—Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP).

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. The term ''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 requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3); *Use:* CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851 (d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D–1(c) of the Act and § 423.128(a)(3) for Part D sponsors.

The regulatory provisions at §§ 422.111(b) and 423.128(b) require MA organizations and Part D sponsors to disclose plan information, including: service area, benefits, access, grievance and appeals procedures, and quality improvement/assurance requirements. MA organizations and sponsors may send the ANOC separately from the EOC, but must send the ANOC for enrollee receipt by September 30. The required due date for the EOC is 15 days prior to the start of the AEP.

CMS requires MA organization and Part D sponsors to submit marketing materials to CMS for review prior to the MA organization or sponsor distributing those materials to the public. In section 1851(h), paragraphs (1), (2), and (3) establish this requirement for MA organizations. Section 1860D–1(b)(1)(B)(vi) directs Part D sponsors to follow the same requirements in section 1851(h) that MA organizations must follow for this purpose. *Form number:* CMS–10260 (OMB control number: 0938–1051); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 800; *Number of Responses:* 48,439; *Total Burden Hours:* 33,419.50. (For questions regarding this collection contact Elizabeth Jacob at 410–786–8658).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. The MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 555; *Number of Responses:* 4,995; *Total Burden Hours:* 149,850. (For questions regarding this collection contact Rachel Shevland at 410–786–3026).

Dated: September 30, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–21657 Filed 10–4–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a virtual meeting. The meeting will be open to the public via webcast. The committee will discuss and vote on a recommendation related to the implementation of the HIV Organ Policy Equity (HOPE) Act of 2013, pertaining to HIV-positive to HIV-positive organ transplantation.

DATES: The meeting will take place virtually on Thursday, November 17, 2022 from approximately 10 a.m.–3 p.m. eastern time (ET). Meeting times are tentative and subject to change. The confirmed times and agenda items for the meeting will be posted on the ACBTSA web page at *https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meetings/2022-11-17/index.html* when this information becomes available.

FOR FURTHER INFORMATION CONTACT: James Berger, Designated Federal Officer for the ACBTSA; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Rockville, MD 20852. Email: *ACBTSA@hhs.gov.* Phone: 202–795–7608.

SUPPLEMENTARY INFORMATION: On the day of the meeting, please go to *https://www.hhs.gov/live/index.html* to view the meeting. The public will have an opportunity to present their views to the ACBTSA by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide written public comment should review instructions at *https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meetings/2022-11-17/index.html* and respond by midnight November 9, 2022, ET. Written public comments will be accessible to the public on the ACBTSA web page prior to the meeting.

Background and Authority: The ACBTSA is a discretionary Federal advisory committee and is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app), which sets forth standards for the formation and use of advisory committees. The ACBTSA functions to provide advice to the Secretary through the Assistant Secretary for Health on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood and tissue safety issues with national survey and data

tools; (2) identification of public health issues that affect availability of blood, blood products, and tissues; (3) broad public health, ethical, and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (*e.g.,* product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues. The Committee has met regularly since its establishment in 1997.

Dated: September 23, 2022.

James J. Berger,

Designated Federal Officer, Advisory Committee on Blood and Tissue Safety and Availability, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2022–21620 Filed 10–4–22; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Global Infectious Disease Research Administration Development Award for Low- and Middle-Income Country Institutions (G11 Clinical Trial Not Allowed).

Date: October 27, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Poonam Pegu, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3G33, Rockville, MD 20852, 240–292–0719, *poonam.pegu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21597 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Study Section.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–H, Bethesda, MD 20892, (301) 827–7969, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 29, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21563 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute on Minority Health and Health Disparities Special Emphasis Panel, October 20, 2022, 11:00 a.m. to October 20, 2022, 6:00 p.m., National Institutes of Health, Gateway Plaza, 7201 Wisconsin Ave., Bethesda, MD 20817 which was published in the **Federal Register** on September 14, 2022, FR Doc 2022–19885, 87 FR 56429.

This notice is being amended to announce that the meeting is cancelled and will not be rescheduled.

Dated: September 29, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21567 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Outstanding Investigator Review.

Date: November 1–3, 2022.

Time: 3:00 p.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–827–9087, *mooremar@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BPN Small Molecule and Biologic Therapeutic Drug Discovery for Disorders of the Nervous System.
Date: November 7, 2022.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate cooperative agreement applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–827–0799, *eric.tucker@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; SPAN 2.5.
Date: November 7, 2022.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative Connectivity across Scales: Comprehensive Centers (UM1) and Specialized Projects (U01).
Date: November 9–10, 2022.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *bo-shiun.chen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health.)

Dated: September 29, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21594 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Study Section.
Date: November 3, 2022.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).
Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–A, Bethesda, MD 20892–7924, (301) 827–7912, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 29, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21565 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Study Section.
Date: November 9, 2022.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, 301–443–4577, *nayarp2@csr.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings.
Date: November 10, 2022.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 29, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21592 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Study Section.

Date: November 3–4, 2022.

Time: 10:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, (301) 827–4612, *rajiv.kumar@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 29, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21566 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Pain Research Coordinating Committee.

The meeting will be open to the public. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Pain Research Coordinating Committee.

Date: November 2, 2022.

Time: 10:00 a.m. to 5:00 p.m. Eastern Time (ET).

Agenda: The meeting will cover committee business items and IPRCC member updates. Items discussed will include updates on pain workforce enhancement, pain research, patient engagement, and diversity efforts.

Webcast Live: http://videocast.nih.gov/.

Deadline: Submission of intent to submit written/electronic statement for comments: Wednesday, October 26, 2022, by 5:00 p.m. ET.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda L. Porter, Ph.D., Director, Office of Pain Policy and Planning, Office of the Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, Phone: (301) 451–4460, Email: *Linda.Porter@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The meeting will be open to the public via NIH Videocast *https://videocast.nih.gov/.* Visit the IPRCC website for more information: *http://iprcc.nih.gov.* Agenda and any additional information for the meeting will be posted when available.

Dated: September 29, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21593 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with title 41 of the U.S. Code of Federal Regulations, section 102–3.65(a), notice is hereby given that the Charter for the Fogarty International Center Advisory Board was renewed for an additional two-year period on August 31, 2022.

It is determined that the FICAB is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: September 30, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21615 Filed 10–4–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0015; OMB No. 1660–0117]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA's Grants Reporting Tool (GRT)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of reinstatement and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, without change, of a previously approved information collection for which approval has expired. FEMA will submit the information collection abstracted below to the Office of Management and Budget

for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 4, 2022.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Jennifer Garza, Acting Senior Advisor, *jennifer.garza@fema.dhs.gov* or (202) 786–9602.

SUPPLEMENTARY INFORMATION: The Grants Reporting Tool (GRT) is a web-based reporting system designed to help State Administrative Agencies (SAAs) meet all reporting requirements as identified in the grant guidance of FEMA's portfolio of preparedness grants managed by the FEMA's Grant Programs Directorate (GPD).

Title 2 CFR, part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), establishes uniform administrative rules for assistance awards and subawards to state, local, tribal and territorial (SLTT) governments. FEMA determined that it is necessary to automate the grant reporting process to have consistent implementation of FEMA grant administration policies to reduce duplicative and tedious data entry, to measure preparedness gains more effectively, and to streamline application submission and management for recipients and subrecipients.

Title XX of the Homeland Security Act of 2002 authorizes the Secretary of Homeland Security, acting through the FEMA Administrator, to provide grants to assist SLTT governments in preventing, preparing for, protecting against, and responding to acts of terrorism. Recipients use the GRT to submit annual investment justifications and biannual progress reports. Further, section 2022 of the Homeland Security Act of 2002 (6 U.S.C. 612) mandates that FEMA review grants awarded to states and high-risk urban areas at least every two years and requires that recipients submit annual reports on the use of funds awarded under sections 2003 or 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604, 605, respectively). Section 2022 also provides DHS the authority to have full access to information regarding activities carried out under any grant DHS administers.

Additionally, Section 662 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), as amended, (Pub. L. 109–295) (6 U.S.C. 762); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Pub. L. 93–288) (42 U.S.C. 5121 *et seq.*); the Earthquake Hazards Reduction Act of 1977, as amended (Pub. L. 95–124) (42 U.S.C. 7701 *et seq.*); and the National Flood Insurance Act of 1968, as amended (Pub. L. 90448) (42 U.S.C. 4001 *et seq.*), authorize FEMA to administer the Emergency Management Performance Grant (EMPG) Program. The primary purpose of the EMPG program is to provide grants to assist SLTT emergency management agencies to implement the National Preparedness System (NPS) and to support the National Preparedness Goal of a secure and resilient nation. Recipients of funding under this authorization use the GRT to submit biannual progress reports.

This proposed information collection previously published in the **Federal Register** on May 23, 2022, at 87 FR 31253 with a 60 day public comment period. No comments were received. This information collection expired on May 31, 2020. FEMA is requesting a reinstatement, without change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: FEMA's Grants Reporting Tool (GRT).

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0117.

FEMA Forms: FEMA Form FF–207–FY–22–121, Biannual Strategy Implementation Report (BSIR).

Abstract: The GRT is a web-based reporting system designed to help recipients meet all reporting requirements as identified in the grant guidance of FEMA's portfolio of preparedness grants sponsored by the agency's Grant Programs Directorate (GPD). The information enables FEMA to evaluate applications and make award decisions, monitor ongoing performance, and manage the flow of Federal funds, and to appropriately close out grants. GRT supports the information collection needs of each grant program processed in the system.

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 81.

Estimated Number of Responses: 162.

Estimated Total Annual Burden Hours: 2,471.

Estimated Total Annual Respondent Cost: $111,442.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $1,259,210.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–21557 Filed 10–4–22; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID: CISA–2022–0010]

Cyber Incident Reporting for Critical Infrastructure Act of 2022: Washington, DC Listening Session

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: Notice of public listening session.

SUMMARY: The Cybersecurity and Infrastructure Security Agency (CISA) is announcing one additional public listening session located in Washington, DC to receive input on the forthcoming proposed regulations required by the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA). This session will allow interested parties to provide input to CISA on the same key areas of interest published in the **Federal Register** on September 12, 2022.

DATES: An additional public listening session is scheduled to be held on the following date and time at the following location:

Washington, DC—October 19, 2022; 11:00 a.m.–3:00 p.m.; Metropolitan Washington Council of Governments Building, 777 North Capitol Street NE, Washington, DC 20002.

CISA reserves the right to reschedule, move to virtual, or cancel this session for any reason, including a health emergency, severe weather, or an incident that impacts the ability of CISA to safely conduct the session in person at the proposed date, time, and location. Any change to the date, location, or start and end time for this listening session will be posted on *www.cisa.gov/circia.*

CISA is committed to ensuring all participants have equal access to this session regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact CISA at *circia@cisa.dhs.gov* or (202) 964–6869 as soon as possible prior to the session.

Registration is encouraged for this public listening session and priority access will be given to individuals who register. To register, please visit *www.cisa.gov/circia* and follow the instructions available there to complete registration. Registration for the session will be accepted until 5:00 p.m. (Eastern Daylight Time) two days before the session.

FOR FURTHER INFORMATION CONTACT: Todd Klessman, CIRCIA Rulemaking Team Lead, *circia@cisa.dhs.gov,* 202–964–6869.

SUPPLEMENTARY INFORMATION: This public listening session is intended to serve as an additional means for interested parties located in Washington, DC to provide input to CISA on aspects of the proposed regulations to implement CIRCIA prior to the publication of the Notice of Proposed Rulemaking. CISA is particularly interested in receiving stakeholder input in the same key areas identified in section IV (Key Inputs Solicited by the Agency) of the Notice published in the **Federal Register** on September 12, 2022 87 FR 55830. This public listening session will also observe the same participation procedures provided in section III (Public Listening Session Procedures and Participation) of the same **Federal Register** Notice. 87 FR 55830 (Sept. 12, 2022).

CISA notes that this public meeting is being held solely for information and program-planning purposes. Inputs provided during the meeting do not bind CISA to any further actions.

Todd B. Klessman,

Senior Policy Advisor, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–21635 Filed 10–4–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the 2022 Amendments to the Menominee Indian Tribe of Wisconsin and the State of Wisconsin Gaming Compact of 1992 (Amendment) providing for Class III gaming between the Menominee Indian Tribe (Tribe) and the State of Wisconsin (State).

DATES: The Amendment takes effect on September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Tribe to engage in event wagering, including requiring minimum internal control standards and rules of play for event wagering. The Amendment makes technical amendments to update and correct various provisions of the compact. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–21607 Filed 10–4–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLWO600000.L18200000.XP0000]

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 five of the Bureau of Land Management's (BLM) citizens' advisory committees affiliated with specific sites on the BLM's National Conservation Lands. The five 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 4, 2022.

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 (202) 742–0649 or *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 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 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 of 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 or by 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

Darren Scott, BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508; Phone: (505) 350–5871; Email: *dscott@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 of 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 13 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 is a representative of a commercial recreation operation in the CMPA; a representative of mechanized or consumptive recreation; a person with expertise and interest in wild horse management on Steens Mountain; a person who has no financial interest in the CMPA to represent statewide interests; and a non-voting State government liaison to the Council.

San Juan Islands National Monument Advisory Committee (MAC)

Jeff Clark, BLM Spokane District Office, 1103 North Fancher Road, Spokane, WA 99212; Phone: (509) 536–1297; Email: *jeffclark@blm.gov.*

The MAC consists of 12 members that include two recreation and tourism representatives; two wildlife and ecological interests representatives; two cultural and heritage interests 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

Grand Staircase-Escalante National Monument Advisory Committee (MAC)

David Hercher, BLM Paria River District Office, 669 South Highway 89A, Kanab, UT 84741; Phone: (435) 899–0415; Email: *dhercher@blm.gov.*

The 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 Special Government Employees (SGEs) for each of the following areas of expertise: paleontology; archaeology; geology; botany or wildlife biology; history or social science; and systems ecology. 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 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,

Acting Assistant Director for Communications.

[FR Doc. 2022–21583 Filed 10–4–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLWO600000.L18200000. XP0000]

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 13 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 their geographic areas.

DATES: All nominations must be received no later than November 4, 2022.

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 (202) 742–0649 or *crichardson@blm.gov. 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 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/blm.gov/files/1120-019_0.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.*

Arizona

Arizona RAC

Dolores Garcia, BLM Arizona State Office, 1 North Central Avenue, Suite 800, Phoenix, AZ 85004; Phone: (602) 417–9241; Email: *dagarcia@blm.gov.*

California

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.*

Colorado

Northwest RAC

Eric Coulter, BLM Upper Colorado River District Office, 2815 H Road, Grand Junction, CO 81056; Phone (970) 244–3000; Email: *ecoulter@blm.gov.*

Rocky Mountain RAC

Cathy Cook, BLM Rocky Mountain District Office, 3028 East Main Street, Cañon City, CO 81212; Phone: (719) 269–8554; Email: *ccook@blm.gov.*

Southwest RAC

Shawn Reinhardt, BLM Southwest Colorado District Office, 2465 South Townsend Avenue, Montrose, CO 81401; Phone (970) 240–5430; Email: *sreinhardt@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, 111 Garryowen Road, Miles City, MT 59301; Phone: (406) 233–2831; Email: *mjacobse@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.*

Oregon/Washington

Eastern Washington RAC

Jeff Clark, BLM Spokane District Office, 1103 North Fancher Road, Spokane, WA 99212; Phone: (509) 536–1297.

John Day-Snake RAC

Kaitlyn Webb, Public Affairs Officer, BLM Prineville District Office, 3050 NE 3rd Street, Prineville, OR 97754; Phone: (541) 460–8781; Email: *kwebb@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.*

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,

Acting Assistant Director for Communications.

[FR Doc. 2022–21568 Filed 10–4–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–34430; PPWOCRADN0–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service is soliciting nominations for one member of the Native American Graves Protection and Repatriation Review Committee (Committee). The Secretary of the Interior will appoint one member from nominations submitted by Indian Tribes, Native Hawaiian organizations, or traditional Native American religious leaders. The nominee must be a traditional Indian religious leader.

DATES: Nominations must be received by December 5, 2022.

ADDRESSES: Please address nominations to Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Review Committee, via email *nagpra_info@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, via telephone at (202) 354–2201. 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 Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and is regulated by the Federal Advisory Committee Act.

The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process.
2. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items.
3. Facilitating the resolution of disputes.
4. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains.
5. Consulting with Indian Tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such Tribes or organizations.
6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA.
7. Making recommendations regarding future care of repatriated cultural items.

The Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Committee. Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members are appointed for four-year terms and incumbent members may be reappointed for two-year terms. The Committee's work is completed during public meetings. The Committee attempts to meet in person twice a year and meetings normally last two or three days. In addition, the Committee may also meet by public teleconference one or more times per year.

Members will be appointed as special Government employees (SGEs). 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 and more information about ethics requirements for SGEs at the following website: *https://www.doi.gov/ethics/special-government-employees.* Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements annually. Please contact 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Committee members serve without pay but are reimbursed for each day of committee business. Committee members are also reimbursed for travel expenses incurred in association with Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Committee, including the Committee's charter, meeting procedures, and past practice, is available on the National NAGPRA Program website, at *https://www.nps.gov/nagpra/review-committee.htm.*

Nominations must:

1. If submitted by an Indian Tribe or Native Hawaiian organization, be submitted on the official letterhead of the Indian Tribe or Native Hawaiian organization.
2. If submitted by an Indian Tribe or Native Hawaiian organization, affirm that the signatory is the official authorized by the Indian Tribe or Native Hawaiian organization to submit the nomination.
3. If submitted by a Native American traditional religious leader, affirm that the signatory meets the definition of traditional Native American religious leader (see 43 CFR 10.2(d)(3)).
4. Provide the nominator's original signature, daytime telephone number, and email address.
5. Include the nominee's full legal name, home address, home telephone number, and email address.

Nominations should include a resume providing an adequate description of the

nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member.

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information with your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–21532 Filed 10–4–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–682 and 731–TA–1592–1593 (Preliminary)]

Certain Freight Rail Couplers and Parts Thereof From China and Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–682 and 731–TA–1592–1593 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain freight rail couplers and parts thereof from China and Mexico, provided for in subheadings 8607.30.10 and 7326.90.86 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Subject merchandise attached to finished rail cars may also enter under HTSUS heading 8606 or under subheadings 9803.00 and 7325.99 if imported as an Instrument of International Traffic. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 14, 2022. The Commission's views must be transmitted to Commerce within five business days thereafter, or by November 21, 2022.

DATES: September 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on September 28, 2022, by McConway & Torley LLC, Pittsburgh, Pennsylvania, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold an in-person staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on October 19, 2022 at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before October 17, 2022. Please provide an email address for each conference participant in the email. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person. The Director of the Office of Investigations, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the conference. Information on conference procedures will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 24, 2022, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on October 18, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 29, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21576 Filed 10–4–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1311]

In the Matter of Certain Centrifuge Utility Platform and Falling Film Evaporator Systems and Components Thereof; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that all respondents named in this investigation have been terminated or found in default. The Commission is now requesting written submissions on remedy, the public interest, and bonding concerning the respondents found to be in default.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (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 *https://www.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 instituted this investigation on May 4, 2022. 87 FR 26372 (May 4, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain centrifuge utility platform and falling film evaporator systems and components thereof by reason of infringement of claims 1, 10, and 14 of U.S. Patent No. 10,814,338; claims 1, 10, and 18 of U.S. Patent No. 11,014,098; and claims 1, 9, and 19 of U.S. Patent No. 10,899,728. *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named fifteen respondents, including Ambiopharm, Inc. of Beech Island, SC (''Ambiopharm''); RI Hemp Farms, LLC of West Greenwich, RI (''RI Hemp Farms''); Henan Lanphan Industry Co., Ltd. of Zhengzhou, China (''Henan Lanphan''); Toption Instrument Co., Ltd. of Xi'an, China (''Toption''); Ezhydro of Sacramento, CA; Shanghai Yuanhuai Industries Co., Ltd. of Shanghai City, China (''Shanghai Yuanhuai''); and Zhangjiagang Chunk d/b/a Charme Trading Corp. of Suzhou Shi, China (''Charme'') (collectively, ''defaulting respondents''). *Id.* at 26373. The Office of Unfair Import Investigations (''OUII'') is also participating in the investigation. *Id.*

On August 4, 2022, the Commission determined not to review an initial determination (Order No. 15) finding Ambiopharm and RI Hemp Farms in default. Order No. 15 (July 7, 2022), *unreviewed by* Comm'n Notice (Aug. 4, 2022). On August 5, 2022, the Commission determined not to review an initial determination (Order No. 21) finding Henan Lanphan and Toption in default. Order No. 21 (July 19, 2022), *unreviewed by* Comm'n Notice (Aug. 5, 2022). Also on August 5, 2022, the Commission determined not to review an initial determination (Order No. 22) finding Ezhydro in default. Order No. 22 (July 20, 2022), *unreviewed by* Comm'n Notice (Aug. 5, 2022). On August 29, 2022, the Commission determined not to review an initial determination (Order No. 26) finding Shanghai Yuanhuai and Charme in default. Order No. 26 (July 29, 2022), *unreviewed by* Comm'n Notice (Aug. 29, 2022). All other respondents named in the notice of investigation have been terminated from the investigation. On August 31, 2022, complainant Apeks, LLC (''Apeks'') filed a ''Written Submission on Remedy, the Public Interest and Bonding.'' On September 20, 2022, Apeks filed a motion to terminate the investigation as to defaulting respondent Toption based on settlement. Apeks filed a corrected version of that motion thereafter on September 23, 2022. On the same day, OUII filed a response supporting Apeks' motion to terminate Toption from the investigation. Apeks' motion is currently pending before the Commission.

Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered with respect to the Defaulting Respondents, identified above. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order or one or more cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The Commission has determined not to consider Apeks' August 31, 2022, submission on remedy, the public interest, and bonding, which was filed before the date of this notice. Apeks may now file an initial and a reply submission in response to this notice according to the instructions below.

Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on October 14, 2022. Reply submissions must be filed no later than the close of business on October 21, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1311) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on September 29, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 30, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21630 Filed 10–4–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Third Review)]

Artists' Canvas 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 artists' canvas from China would be likely to lead to continuation or recurrence of material injury to an industry in the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 1, 2022 (87 FR 5513) and determined on May 9, 2022 that it would conduct an expedited review (87 FR 54259, September 2, 2022).

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 September 29, 2022. The views of the Commission are contained in USITC Publication 5371 (September 2022), entitled *Artists' Canvas from China: Investigation No. 731–TA–1091 (Third Review).*

By order of the Commission.

Issued: September 29, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21574 Filed 10–4–22; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed teleconference meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 28, 2022, from 9 a.m. to 5 p.m. (ET).

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will hold a teleconference meeting on October 28, 2022, from 9 a.m. to 5 p.m. (ET). The meeting will be closed to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app., that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 29, 2022.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2022–21553 Filed 10–4–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On September 30, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Montana in the lawsuit entitled *United States* v. *Atlantic Richfield Company,* Civil Action No. CV89–039–BU–SEH.

The Consent Decree would resolve the United States' and State of Montana's claims against the Atlantic Richfield Company under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), and the Montana Comprehensive Environmental Cleanup and Responsibility Act, 75–10–701, *et seq.,* for the recovery of costs related to the release of hazardous substances at the Anaconda Smelter NPL Site (the ''Site'') in Deer Lodge County, Montana. The Consent Decree would require Atlantic Richfield to reimburse the United States for $48,000,000 in past response costs and future oversight costs that have been or will be incurred in responding to contamination at the Site. AR will also pay the U.S. Forest Service $185,752 to reimburse anticipated future costs that will be spent overseeing Atlantic Richfield's remedial activities on U.S. Forest Service administered lands. Finally, AR will complete all cleanup actions required under the various Records of Decision, amendments thereto, and other decision documents issued by the U.S. Environmental Protection Agency (''EPA'') for the Site. Many of these actions have already been initiated and completed or substantially completed by Atlantic Richfield pursuant to various unilateral administrative orders issued by EPA since the 1990s.

The estimated cost of the work required of Atlantic Richfield under the Consent Decree is $83.1 million. This includes future long-term operation and maintenance activities to assure the protectiveness of the Site remedies. AR will provide financial assurance through letters of credit and/or surety bonds to guarantee funds for this amount. Finally, upon entry of the proposed Consent Decree, the obligations that AR assumed under the 2020 Partial Consent Decree for the Anaconda Smelter NPL Site will be incorporated into and superseded by the more extensive requirements of this Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Montana* v. *Atlantic Richfield Company,* D.J. Ref. No. 90–11–2–430. 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 email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree and its five (5) appendices may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree without the appendices 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 $28.50 (25 cents per page reproduction cost) payable to the United States Treasury for a paper copy of the Consent Decree without the appendices.

Susan Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–21644 Filed 10–4–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1807]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Wednesday October 26th, 2022 at 1:00 p.m. ET.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *https://juvenilecouncil.ojp.gov/* or contact Julie Herr, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–6885, email at *Julie.herr@usdoj.gov;* or Maegen Barnes, Project Manager/Federal Contractor, by telephone (732) 948–8862, email at *Maegen.Barnes@vaultes.com.* Please note that the above phone numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206(a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Information regarding this meeting will be available on the Council's web page at *https://juvenilecouncil.ojp.gov/.* The meeting is open to the public, and available via online video conference, but prior registration is required (see below). In addition, meeting documents will be viewable via this website including meeting announcements, agendas, minutes and reports.

Although designated agency representatives may attend in lieu of members, the Council's formal membership consists of the following secretaries and/or agency officials; Attorney General (Chair), Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), Secretary of Health and Human Services (HHS), Secretary of Labor (DOL), Secretary of Education (DOE), Secretary of Housing and Urban Development (HUD), Director of the Office of National Drug Control Policy, Chief Executive Officer of AmeriCorps and the Assistant Secretary of Homeland Security for the U.S. Immigration and Customs Enforcement. Ten additional members are appointed by the President of the United States, Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader and the Chairman of the Committee on Indian Affairs of the Senate. Further agencies that take part in Council activities include, the Departments of Agriculture, Defense, Interior and the Substance and Mental Health Services Administration of HHS.

Council meeting agendas are available on *https://juvenilecouncil.ojp.gov/.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion of agency work; and (c) Council member announcements.

For security purposes and because space is limited, members of the public who wish to attend must register in advance of the meeting online at the meeting registration site, no later than Friday, October 21 2022. Should issues arise with online registration, or to register by email, the public should contact Maegen Barnes, Project Manager/Federal Contractor (see above for contact information). If submitting registrations via email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at *https://juvenilecouncil.ojp.gov/.*

Note: Photo identification will be required to attend the meeting at the OJP 810 7th Street Building.

Interested parties may submit written comments and questions in advance to Julie Herr (DFO) for the Council, at the contact information above. All comments and questions should be submitted no later than 5:00 p.m. ET on Thursday, October 20, 2022.

The Council will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the Council.

Julie Herr,

Designated Federal Official, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2022–21575 Filed 10–4–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Nos. D–12042, D–12039, and D–12049]

Notice of Withdrawal of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of withdrawal of proposed exemptions.

SUMMARY: This document provides notice of the withdrawal of three proposed individual exemptions from certain prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code). The proposed exemptions were issued by the Department of Labor on August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

Withdrawal of Proposed Exemption

The Department published notices of proposed exemption from certain prohibited transaction provisions of ERISA and the Code in the **Federal Register** on August 24, 2022, for the following applicants: Triple-S Management Corporation, Blue Cross and Blue Shield of Kansas City, and the National Account Service Company LLC.[1] As described more fully in the proposed exemptions, the applicants sponsor defined benefit plans that have (or had) filed legal action and claims against Allianz Global Investors U.S. LLC (Allianz) and Aon Investments USA Inc. (Aon) regarding certain investment losses the plans incurred during the first quarter of 2020.

The proposed exemptions would have permitted the applicants to make payments to their respective plans in order to offset the investment losses the plans incurred, and, if the plans received litigation proceeds from the claims, to transfer the lesser of the ligation proceeds amounts or the payments to the applicants. Without an exemption, the plans' receipt of payments from the applicants in exchange for the plans' transfer of litigation proceeds to the applicants would violate certain prohibited transaction provisions of ERISA and the Code. The applicants represented to the

[1] Triple-S Management Corporation (87 FR 52168); Blue Cross and Blue Shield of Kansas City (87 FR 52124); National Account Service Company LLC (87 FR 52174).

Department that the plans have received litigation proceeds from the claims.

After the publication of the proposed exemptions in the **Federal Register**, the applicants informed the Department that they have decided not to pursue the proposed exemptions due to changed circumstances and requested the Department to withdraw their exemptions. Therefore, the Department is withdrawing the proposed exemptions from the **Federal Register** as requested.[2] As a result, the applicants may not receive repayments for any amounts they paid to their respective plans in connection with the plans' receipt of litigation proceeds from the claims, because such repayments would constitute a violation of certain prohibited transaction provisions of ERISA and the Code.

Signed in Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–21578 Filed 10–4–22; 8:45 am]

BILLING CODE 4510–29–P

[2] In withdrawing the proposed exemptions, the Department is not expressing an opinion regarding the merits of any claim against Allianz and Aon or whether the plans' fiduciaries met their fiduciary duties with respect to plan assets that are the subject of the claims. Further, in withdrawing the proposed exemptions, the Department is not limiting any party's claim, demand, and/or cause of action arising from the plans' 2020 first quarter losses in any way.

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation (NSF) Small Business Innovation Research (SBIR)/ Small Business Technology Transfer (STTR) Pre-Award Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation (NSF) Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Pre-Award Information Collection.

OMB Control No.: 3145–New.

Abstract: The NSF SBIR/STTR programs focus on transforming scientific discovery into products and services with commercial potential and/or societal benefit. Unlike fundamental or basic research activities that focus on scientific and engineering discoveries, the NSF SBIR/STTR programs support the creation of opportunities to move fundamental science and engineering out of the lab and into the market at scale, through startups and small businesses representing deep technology ventures.

The NSF SBIR/STTR programs have two phases: Phase I and Phase II. Phase I is a 6–12 month experimental or theoretical investigation that allows the awardees to determine the scientific and technical feasibility, as well as the commercial merit of the idea or concept. Phase II further develops the proposed concept, with a goal of working toward the commercial launch of the new product, process, or service being developed.

The NSF SBIR/STTR programs request the Office of Management and Budget (OMB) approval of this clearance that will allow the programs to collect information from a selected group of applicants—those that have been reviewed by independent experts and that NSF Program Directors are considering recommending for funding—for the purpose of making a funding decision. This information includes, but is not exclusive to, a list of company officers and the corresponding ownership status of each company officer within the startup, whether the startup is associated or affiliated with other companies, whether there exist any relationships (personal, financial, and/or professional) between project personnel, and the locations of all the facilities where significant research will be performed for the proposed project. Such data will enable the NSF Program Directors to evaluate a given company's business structure, ascertain the level of commitment of the Principal Investigator (PI) and co-PIs to the startup venture, and identify conflicts of interests (if any), as part of the due diligence process that the programs undertake to verify there are no fraudulent or inappropriate business practices prior to recommending the small business for an award.

Following standard OMB requirements, NSF will request OMB approval in advance and provide OMB with a copy of the form containing these questions. Data collected will be used strictly for due-diligence, auditing, and/or legal purposes, and are needed for effective pre-award management, administration, and/or program monitoring. The applicants, if being considered for award, will only be asked to submit a signed form containing their responses to the questions once for *each* NSF SBIR/STTR proposal (Phase I and II, if applicable). The data collection burden to the selected applicants will be limited to no more than 10 minutes of the respondents' time in each instance. Summaries of the collected data are also being used to respond to queries from Congress, the Small Business Administration, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors, NSF's Office of the Inspector General, and other pertinent stakeholders.

Respondents: PIs listed on the NSF SBIR/STTR proposals.

Estimated Number of Annual Respondents: 750.

Frequency: Once.

Average Time: 0.167 hours.

Estimated Total Burden Hours: 126 hours per year.

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Dated: September 30, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–21638 Filed 10–4–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7019; NRC–2021–0182]

Oregon State University

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has issued a renewal to special nuclear materials (SNM) License No. SNM–2013 to Oregon State University (OSU) in Corvallis, Oregon. The renewed license will authorize the applicant to continue research on research and test reactor fuel rods that contain greater than critical mass amounts of SNM. The license renewal would allow OSU to continue licensed activities for 10 years beyond its current license.

DATES: Renewed License No. SNM–2013 was issued on September 30, 2022, and is effective as of the date of issuance.

ADDRESSES: Please refer to Docket ID NRC–2021–0182 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0182. 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.
- *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, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Oregon State University (OSU) is a public land-grant research university in Corvallis, Oregon. The OSU School of Engineering is under contract to the Department of Energy (DOE) to conduct non-destructive testing research on research reactor fuel from five different research reactors in the United States. The quantity of SNM involved in this project requires an NRC-issued SNM license pursuant to part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic licensing of special nuclear material.''

II. Discussion

Pursuant to 10 CFR 2.106, the NRC is providing notice of the renewal of License SNM–2013 to OSU, which authorizes OSU to complete research involving SNM for DOE at its location in Corvallis, Oregon. OSU submitted its renewal application on July 29, 2021, and submitted a correction on July 31, 2021. An NRC administrative completeness review, dated September 15, 2021, found the application acceptable for a technical review. After reviewing the OSU SNM renewal application, the NRC sent a request for additional information (RAI) dated October 29, 2021, to OSU regarding their renewal application. On January 5, 2022, OSU responded to the RAI. OSU subsequently supplemented its license renewal application by letter dated April 19, 2022, requesting an exemption from the criticality alarm requirement in 10 CFR 70.24.

Because the licensed material will be used for research and development purposes, renewal of License SNM–2013, is an action that is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, pursuant to 10 CFR 51.22(c)(14)(v).

The NRC previously published a notice of OSU's request for a materials license renewal with a notice of opportunity to request a hearing in the **Federal Register** on October 1, 2021 (86 FR 54485). No requests for a hearing or petition for leave to intervene were received.

During the technical review, the NRC reviewed the application in areas that included, but were not limited to, radiation safety, chemical safety, fire safety, security, environmental protection, and material control/accountability. Prior to approving the request to renew License SNM–2013, NRC reviewed the application to determine whether it met the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations in 10 CFR part 70. The NRC's review and findings are documented in a safety evaluation report. In the report, the NRC concluded that the licensee can continue to operate the facility without endangering the health and safety of the public.

The NRC finds that the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC's rules and regulations as set forth in 10 CFR chapter 1. Accordingly, this license was issued on September 30, 2022, and was effective immediately.

III. Availability of Documents

In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the safety evaluation report and accompanying documentation and license, are available electronically in the NRC's Electronic Reading Room at *https://www.nrc.gov/reading-rm/adams.html.* From this site, you can access ADAMS, which provides text and image files of the NRC's public documents. For further details related to

this action, visit *https://www.regulations.gov* under Docket ID NRC–2021–0182.

The documents identified in the following table are available to interested persons through ADAMS accession numbers as indicated.

Document description	ADAMS Accession No.
OSU's application for renewal of special nuclear materials license, dated July 29, 2021	ML21211A614
OSU's corrected (public) application for renewal of special nuclear materials license, dated July 31, 2021	ML21235A325
NRC Request for Additional Information dated October 29, 2021	ML21300A112 (package).
OSU's response to request for additional information and revisions to application, dated January 5, 2022	ML22006A036
OSU Supplemental Information regarding Request for Exemption from 10 CFR 70.24, "Criticality Accident Requirements," dated April 19, 2022.	ML22122A105 (package).
Issuance of Renewed License SNM–2013, dated September 30, 2022	ML22047A187
NRC Safety Evaluation Report, dated September 30, 2022	ML22056A357

Dated: September 30, 2022.

For the Nuclear Regulatory Commission.

Carrie M. Safford,

Deputy Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–21623 Filed 10–4–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–143–LA; ASLBP No. 22–975–01–LA–BD01]

Nuclear Fuel Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to the Commission's regulations, *see, e.g.,*10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, and the procedures concerning access to sensitive unclassified non-safeguards information (SUNSI) published in the **Federal Register**, 87 FR 53507, 53510–11 (2022), notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over an appeal from the NRC Staff's denial of a request for access to SUNSI in the following proceeding:

NUCLEAR FUEL SERVICES, INC. (License Amendment Application)

On September 12, 2022, Ms. Park Overall asked that she and Ms. Sandra Higgins Miller be granted access to SUNSI that was included in the application to amend special nuclear materials license number SNM–124 submitted by Nuclear Fuel Services, Inc. *See* Letter from Ms. Park Overall to NRC Office of the Secretary RE: NRC–2022–97 and All Other #'s Listed Below (Sept. 12, 2022). The NRC Staff denied Ms. Overall's request. *See* Letter from James B. Downs to Ms. Park Overall (Sept. 21, 2022). Ms. Overall challenges that denial. *See* Letter from Ms. Park Overall to Hon. E. Roy Hawkens (Sept. 28, 2022).

The Board is comprised of the following Administrative Judges:

G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

William J. Froehlich, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, 10 CFR 2.302.

Rockville, Maryland.

Dated: September 30, 2022.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2022–21652 Filed 10–4–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34719; File No. 812–15378]

Neuberger Berman BDC LLC, et al.

September 29, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Neuberger Berman BDC LLC, Neuberger Berman Next Generation Connectivity Fund Inc., NB Private Markets Fund II (Master) LLC, NB Private Markets Fund III (Master) LLC, NB Crossroads Private Markets Fund IV Holdings LLC, NB Crossroads Private Markets Fund V Holdings LP, NB Crossroads Private Markets Fund VI Holdings LP, NB Crossroads Private Markets Fund VII Holdings LP, NB Crossroads Private Markets Access Fund LLC, NB Alternatives Advisers LLC, Neuberger Berman Investment Advisers LLC, Columbia NB Crossroads Fund II LP, Golden Road Capital Pooling L.P., MEP Opportunities Fund Holdings LP, NB—Iowa's Public Universities LP, NB 1 PE Investment Holdings LP, NB 1911 LP, NB AGI PE Portfolio II Fund LP, NB ASGA Fund Holdings LP, NB Ayame Holdings LP, NB Blue Ensign Fund LP, NB Caspian Holdings LP, NB CPEG Fund Holdings LP, NB Credit Opportunities Co-Invest Affordable Care I LP, NB Credit Opportunities Co-Invest I LP, NB Credit Opportunities Fund II LP, NB Credit Opportunities II Cayman LP, NB Credit Opportunities II Co-Investment Fund (Cayman) LP, NB Credit Opportunities II Co-Investment (Whistler) LP, NB Crossroads 23 LC Holdings LP, NB Crossroads 23 MC Holdings LP, NB Crossroads 23 SS Holdings LP, NB Crossroads 23 VC Holdings LP, NB Crossroads 24 LC Holdings LP, NB Crossroads 24 MC Holdings LP, NB Crossroads 24 SS Holdings LP, NB Crossroads 24 VC Holdings LP, NB Crossroads XXII—MC Holdings LP, NB Crossroads XXII—VC Holdings LP, NB Crystal PE Holdings LP, NB Direct Access Fund II LP, NB Enhanced Income Holdings LP, NB Enhanced Income Holdings II LP, NB Enstar PE Opportunities Fund, LP, NB Euro Crossroads 2018 Holdings SCSp, NB Euro Crossroads 2021 Holdings SCSp, NB Flamingo Private Debt LP, NB

Flat Corner PE Holdings LP, NB Gemini Fund LP, NB Granite Private Debt LP, NB Greencastle LP, NB Initium Infrastructure (EUR) Holdings LP, NB Initium Infrastructure (USD) Holdings LP, NB Initium PE (EUR) Holdings LP, NB Initium PE (USD) Holdings LP, NB Initium PE II (USD) Holdings LP, NB Oak LP, NB PA Co-Investment Fund LP, NB PD III Holdings (LO) LP, NB PD III Holdings (LS) LP, NB PD III Holdings (UO) LP, NB PD III Holdings (US) LP, NB PD IV Equity LP, NB PD IV Holdings (LO–A) LP, NB PD IV Holdings (LO–MS) LP, NB PD IV Holdings (LS–A) LP, NB PD IV Holdings (US–A) (Levered) LP, NB PD IV Holdings (US–B) (Unlevered) LP, NB PD IV Holdings (UO–A) LP, NB PEP Holdings Limited, NB Pinnacol Assurance Fund LP, NB Private Debt Fund LP, NB Private Debt II Holdings LP, NB Private Equity Credit Opportunities Holdings LP, NB Private package lp, NB Rembrandt Holdings 2018 LP, NB Rembrandt Holdings 2020 LP, NB Rembrandt Holdings 2022 LP, NB Renaissance Partners Holdings S.a r.l., NB RESOF Holdings LP, NB RESOF II Cayman Holdings LP, NB RESOF II Holdings LP, NB RESOF SP1 LP, NB River City Fund LP, NB RP Co-Investment & Secondary Fund LLC, NB RPPE Partners LP, NB SBS US 3 Fund LP, NB Select Opps III MHF LP, NB Select Opps IV MHF LP, NB Select Opps V MHF LP, NB SHP Fund Holdings LP, NB SI-Apollo Sengai Fund Holdings LP, NB SOF III Holdings LP, NB SOF IV Cayman Holdings LP, NB SOF IV Holdings LP, NB SOF V Cayman Holdings LP, NB SOF V Holdings LP, NB Sonoran Fund Limited Partnership, NB STAR Buyout Strategy 2020 Holdings Ltd, NB STAR Buyout Strategy 2021 Holdings Ltd, NB STAR Buyout Strategy 2022 Holdings Ltd, NB Strategic Capital LP, NB Strategic Co-Investment Partners IV Holdings LP, NB Strategic Partnership Fund Co-Investments LP, NB Swan Private Debt SCSp, NB TCC Strategic Holdings LP, NB TPSF EM PE Fund LP, NB Wessex Holdings LP, NB Wildcats Fund LP, NB ZCF LP, NBAL Holdings LP, NBFOF Impact—Holdings LP, NBPD AT Holdings (LO–A) LP, NBPD Centennial Holdings (LO–A) LP, NBPD III Equity Co-Invest Holdings A LP, NB-Sompo RA Holdings LP, NEUB Holdings LP, NEUB Infrastructure Holdings LP, Neuberger Berman/New Jersey Custom Investment Fund III LP, NYC-NorthBound Emerging Managers Program LP, NYSCRF NB Co-Investment Fund LLC, NYSCRF NB Co-Investment Fund II LLC, Olive Cayman Holdings Ltd, PECO–PD III BORROWER LP, SJFED Private Equity Strategic Partnership, L.P., SJPF Private Equity Strategic Partnership, L.P., Soleil 2020 Cayman Holdings Ltd, Soleil 2022 EUR Cayman Holdings Ltd, Soleil B 2022 EUR Cayman Holdings Ltd, Soleil B 2022 USD Cayman Holdings Ltd, SunBerg PE Opportunities Fund LLC, SunBern Alternative Opportunities Fund LLC, Toranomon Private Equity 1, L.P., NB BVK Holdings SCSp, NB Strategic Capital II Cayman Holdings LP, NB Strategic Capital II Holdings LP, NB Select Opps VI MHF LP, NB Central Valley Holdings LP, and NB Impulsum (USD) Holdings LP.

Filing Dates: The application was filed on August 5, 2022, and amended on September 22, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, October 24, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Corey Issing, Neuberger Berman Investment Advisers LLC, at *Corey.Issing@nb.com;* Nicole M. Runyan and William J. Tuttle, Kirkland & Ellis LLP, at *Nicole.Runyan@kirkland.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated September 22, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21540 Filed 10–4–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95939; File No. SR–FINRA–2022–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

September 29, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to make the current clearly erroneous pilot program permanent and limit the circumstances under which clearly erroneous review would be available.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 1, 2022, the Commission approved the proposal of Cboe BZX Exchange, Inc. (''BZX'') to amend BZX Rule 11.17, Clearly Erroneous Executions, to: (1) make the current clearly erroneous pilot program permanent; and (2) limit the circumstances where clearly erroneous review would continue to be available during regular trading hours,[4] when the LULD Plan to Address Extraordinary Market Volatility (the ''LULD Plan'') [5] already provides similar protections for trades occurring at prices that may be deemed erroneous.[6] FINRA now proposes to similarly amend FINRA's rules for clearly erroneous transactions in exchange-listed securities to: (1) make the current clearly erroneous pilot program permanent; and (2) limit the circumstances where clearly erroneous review would continue to be available during normal market hours,[7] when the LULD Plan already provides similar protections for trades occurring at prices that may be deemed erroneous.[8] FINRA believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent basis,[9] and in light of amendments to the LULD Plan, including changes to the applicable price bands [10] around the open and close of trading.

Proposal To Make the Clearly Erroneous Pilot Permanent

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.[11] In 2013, FINRA adopted a provision designed to address the operation of the LULD Plan.[12] Finally, in 2014, FINRA adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a SRO or responsible single plan processor in connection with the transmittal or receipt of a trading halt, a FINRA Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[13] These changes are currently scheduled to operate for a pilot period that would end at the close of business on October 20, 2022.[14]

When it originally approved the clearly erroneous pilot, the Commission explained that the changes were ''being implemented on a pilot basis so that the Commission and FINRA can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.'' [15] In the 12 years since that time, FINRA and the national securities exchanges have gained considerable experience in the operation of the rule, as amended on a pilot basis. Based on that experience, FINRA believes that the program should be allowed to continue on a permanent basis so that equities market participants and investors can benefit from the increased certainty provided by the amended rule.

The clearly erroneous pilot was implemented following a severe disruption in the U.S. equities markets on May 6, 2010 (''Flash Crash'') to ''provide greater transparency and certainty to the process of breaking trades.'' [16] Largely, the pilot reduced the discretion of FINRA and the national securities exchanges to deviate from the objective standards in their respective rules when dealing with potentially erroneous transactions. The pilot has thus helped afford greater certainty to members and investors about when trades will be deemed erroneous pursuant to SRO rules and has provided a more transparent process for conducting such reviews. FINRA proposes to make the current pilot permanent so that market participants can continue to benefit from the increased certainty afforded by the current rule.[17]

Amendments to the Clearly Erroneous Rules

When the Participants to the LULD Plan filed to introduce the Limit Up-Limit Down (''LULD'') mechanism, itself a response to the Flash Crash, a handful of commenters noted the potential discordance between the clearly erroneous rules and the Price Bands used to limit the price at which trades

[4] Under BZX rules, the term ''regular trading hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[6] *See* Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 (September 8, 2022) (Order Approving File No. SR–CboeBZX–2022–037).

[7] The term ''normal market hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* FINRA Rule 11892(b)(1) (proposed to be moved to FINRA Rule 11892(a)(1)).

[8] FINRA understands that the other self-regulatory organizations (''SROs'') have or will similarly submit to the Commission substantively identical proposals.

[9] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (''Notice''); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631) (''Amendment Eighteen'').

[10] ''Price bands'' refers to the term provided in Section V of the LULD Plan.

[11] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[12] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012).

[13] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR–FINRA–2014–021).

[14] *See* Securities Exchange Act Release No. 95322 (July 19, 2022), 87 FR 44160 (July 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–020).

[15] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641, 56645 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[16] *See* 75 FR 56641, 56642.

[17] To accomplish this, FINRA proposes to remove the text of existing Supplementary Material .02 of FINRA Rule 11892, which currently provides that the amendments set forth in File Nos. SR–FINRA–2010–032 and SR–FINRA–2014–021, and the provisions of Supplementary Material .03 of this Rule shall be in effect during a pilot period that expires at the close of business on October 20, 2022. Existing Supplementary Material .02 further provides that, if the pilot period is not extended or approved as permanent, the version of this Rule prior to SR–FINRA–2010–032 shall be in effect, and the amendments set forth in File No. SR–FINRA–2014–021 and the provisions of Supplementary Material .03 of this Rule shall be null and void.

would be permitted to be executed pursuant to the LULD Plan. For example, two commenters requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be not subject to review.[18] While the Participants acknowledged that the potential to prevent clearly erroneous executions would be a ''key benefit'' of the LULD Plan, the Participants decided not to amend the clearly erroneous rules at that time.[19] In the years since, industry feedback has continued to reflect a desire to eliminate the discordance between the LULD mechanism and the clearly erroneous rules so that market participants would have more certainty that trades executed within the LULD price bands would stand. For example, the Equity Market Structure Advisory Committee (''EMSAC'') Market Quality Subcommittee included in its April 19, 2016 status report a preliminary recommendation that clearly erroneous rules be amended to conform to the price bands—*i.e.,* ''any trade that takes place within the band would stand and not be broken and trades outside the LU/LD bands would be eligible for the consideration of the Clearly Erroneous rules.'' [20]

FINRA believes that it is important for there to be some mechanism to ensure that investors' orders are either not executed at clearly erroneous prices or are subsequently busted as needed to maintain a fair and orderly market. At the same time, FINRA believes that the LULD Plan, as amended, would provide sufficient protection for trades executed during normal market hours. Indeed, the LULD mechanism could be considered to offer superior protection as it prevents potentially erroneous trades from being executed in the first instance. After gaining experience with the LULD Plan, FINRA now believes that it is appropriate to largely eliminate clearly erroneous review during normal market hours when price bands are in effect. Thus, as proposed, trades executed within the price bands would stand, barring one of a handful of identified scenarios where such review may still be necessary for the protection of investors. FINRA believes that this change would be beneficial for the U.S. equities markets as it would ensure that trades executed within the price bands are subject to clearly erroneous review in only rare circumstances, resulting in greater certainty for members and investors.

The current LULD mechanism for addressing extraordinary market volatility is available solely during normal market hours. Thus, trades outside of normal market hours would not benefit from this protection and could ultimately be executed at prices that may be considered erroneous. For this reason, FINRA proposes that transactions executed outside of normal market hours would continue to be reviewable as clearly erroneous. Continued availability of the clearly erroneous rule at times outside of normal market hours would therefore ensure that FINRA has appropriate authority when erroneous trades are executed outside of the hours where similar protection can be provided by the LULD Plan. Further, the proposal is designed to eliminate the potential discordance between clearly erroneous review and LULD price bands, which does not exist outside of normal market hours because the LULD Plan is not in effect. Thus, FINRA believes that it is appropriate to continue to allow transactions to be eligible for clearly erroneous review if executed outside of normal market hours.

On the other hand, there would be much more limited potential for clearly erroneous transactions during normal market hours. With the introduction of the LULD mechanism in 2013, clearly erroneous trades are largely prevented by the requirement that trades be executed within the price bands. In addition, in 2019, Amendment Eighteen to the LULD Plan eliminated double-wide price bands: (1) at the open, and (2) at the close for Tier 2 NMS Stocks 2 with a reference price above $3.00.[21] Due to these changes, FINRA believes that the price bands would provide sufficient protection to investor orders such that clearly erroneous review would no longer be necessary during normal market hours. As the Participants to the LULD Plan explained in Amendment Eighteen: ''[b]roadly, the Limit Up-Limit Down mechanism prevents trades from happening at prices where one party to the trade would be considered 'aggrieved,' and thus could be viewed as an appropriate mechanism to supplant clearly erroneous rules.'' While the Participants also expressed concern that the price bands might be too wide to afford meaningful protection around the open and close of trading, amendments to the LULD Plan adopted in Amendment Eighteen narrowed price bands at these times in a manner that FINRA believes is sufficient to ensure that investors' orders would be appropriately protected in the absence of clearly erroneous review. FINRA therefore believes that it is appropriate to rely on the LULD mechanism as the primary means of preventing clearly erroneous trades during normal market hours.

At the same time, FINRA is cognizant that there may be limited circumstances where clearly erroneous review may continue to be appropriate, even during normal market hours. Thus, FINRA proposes to amend its clearly erroneous rules to enumerate the specific circumstances where such review would remain available during the course of normal market hours, as follows. All transactions that fall outside of these specific enumerated exceptions would be ineligible for clearly erroneous review.

First, pursuant to proposed paragraph (b)(1)(A), a transaction executed during normal market hours would continue to be eligible for clearly erroneous review if the transaction is not subject to the LULD Plan. In such case, the numerical guidelines set forth in paragraph (b)(2) of FINRA Rule 11892 will be applicable to such NMS stock. While the majority of exchange-listed securities would be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and would therefore be eligible for clearly erroneous review instead.[22] Similarly, there are instances, such as the opening auction on the primary listing market,[23] where transactions are not ordinarily subject to the LULD Plan, or circumstances where a transaction that ordinarily would have been subject to the LULD Plan is not—due, for example, to some issue with processing the price bands. These transactions would continue to be eligible for clearly erroneous review, effectively ensuring that such review remains available as a backstop when the LULD Plan would not prevent executions from occurring at erroneous prices in the first instance.

Second, transactions that resulted from certain systems issues pursuant to proposed paragraph (b)(1)(B) would continue to be eligible for clearly erroneous review. This limited exception would help to ensure that trades that should not have been

[18] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33505 (June 6, 2012) (File No. 4–631).

[19] *See supra* note 18.

[20] *See* EMSAC Market Quality Subcommittee, Recommendations for Rulemaking on Issues of Market Quality (November 29, 2016), *available at https://www.sec.gov/spotlight/emsac-/emsac/recommendations-rulemaking-market-quality.pdf.*

[21] *See* Amendment Eighteen, *supra* note 9.

[22] *See* Appendix A of the LULD Plan.

[23] The initial reference price used to calculate price bands is typically set by the opening price on the primary listing market. *See* Section V(B) of the LULD Plan.

executed would continue to be subject to clearly erroneous review. Specifically, as proposed, transactions executed during normal market hours would be eligible for clearly erroneous review pursuant to proposed paragraph (b)(1)(B) if as a result of a member's technology or systems issue any transaction reported to a FINRA system, such as a FINRA TRF or ADF, occurs outside of the applicable LULD price bands pursuant to Supplementary Material .02 of FINRA Rule 11892. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the subject transaction to buy (sell) is greater than (less than) the reference price, described in proposed paragraph (c) of FINRA Rule 11892, by an amount that equals or exceeds the applicable ''percentage parameter,'' as defined in Appendix A to the LULD Plan.

Third, FINRA proposes to narrowly allow for the review of transactions during normal market hours when the reference price, described in proposed paragraph (c), is determined to be erroneous by a FINRA officer. Specifically, a transaction executed during normal market hours would be eligible for clearly erroneous review pursuant to proposed paragraph (b)(1)(C) if the transaction involved, in the case of (1) a corporate action or new issue or (2) a security that enters a trading pause pursuant to the LULD Plan and resumes trading without an auction,[24] a reference price that is determined to be erroneous by a FINRA officer because it clearly deviated from the theoretical value of the security. In such circumstances, FINRA may use a different reference price pursuant to proposed paragraph (c)(2) of FINRA Rule 11892. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the subject transaction to buy (sell) is greater than (less than) the new reference price, described in paragraph (c)(2) of FINRA Rule 11892, by an amount that equals or exceeds the applicable numerical guidelines or percentage parameters, as applicable depending on whether the security is subject to the LULD Plan. Specifically, the percentage parameters would apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in paragraph (b)(1)(A).

In the context of a corporate action or a new issue, there may be instances where the security's reference price is later determined FINRA to be erroneous (*e.g.,* because of a bad first trade for a new issue), and subsequent LULD price bands are calculated from that incorrect reference price. In determining whether the reference price is erroneous in such instances, FINRA would generally look to see if such reference price clearly deviated from the theoretical value of the security. In such cases, FINRA would consider a number of factors to determine a new reference price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the over-the-counter (''OTC'') market for an OTC up-listing.[25] In the foregoing instances, the theoretical value of the security would be used as the new reference price when applying the percentage parameters under the LULD Plan (or numerical guidelines if the transaction is in an NMS stock that is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.

The following illustrate the proposed application of the rule in the context of a corporate action or new issue:

Example 1

1. ABCD is subject to a corporate action, 1 for 10 reverse split, and the previous day close was $5, but the new theoretical price based on the terms of the corporate action is $50
2. The security opens at $5, with LULD bands at $4.50 × $5.50
3. The bands will be calculated correctly but the security is trading at an erroneous price based on the valuation of the remaining outstanding shares
4. The theoretical price of $50 would be used as the new reference price when applying LULD bands to determine if executions would be cancelled as clearly erroneous

Example 2

1. ABCD is subject to a corporate action, the company is doing a spin off where a new issue will be listed, BCDE. ABCD trades at $50, and the spinoff company is worth ⅕ of ABCD
2. BCDE opens at $50 in the belief it is the same company as ABCD
3. The theoretical values of the two companies are ABCD $40 and BCDE $10
4. BCDE would be deemed to have had an incorrect reference price and the theoretical value of $10 would be used as the new reference price when applying the LULD bands to determine if executions would be cancelled as clearly erroneous

Example 3

1. ABCD is an up-list from the OTC market, the prior day's close on the OTC market was $20
2. ABCD opens trading on the new listing exchange at $0.20 due to an erroneous order entry
3. The new reference price to determine clearly erroneous executions would be $20, the theoretical value of the stock based on where it was last traded

In the context of the rare situation in which a security that enters a LULD trading pause and resumes trading without an auction (*i.e.,* reopens with quotations), the LULD Plan requires that the new reference price in this instance be established by using the mid-point of the best bid and offer (''BBO'') on the primary listing exchange at the reopening time.[26] This can result in a reference price and subsequent LULD price band calculation that is significantly away from the security's last traded or more relevant price, especially in less liquid names. In such rare instances, FINRA is proposing to use a different reference price that is based on the prior LULD band that triggered the trading pause, rather than the midpoint of the BBO.

The following example illustrates the proposed application of the rule in the context of a security that reopens without an auction:

Example 4

1. ABCD stock is trading at $20, with LULD bands at $18 × $22
2. An incoming buy order causes the stock to enter a limit state trading pause and then a trading pause at $22
3. During the trading pause, the buy order causing the trading pause is cancelled
4. At the end of the 5-minute halt, there is no crossed interest for an auction to occur, thus trading would resume on a quote
5. Upon resumption, a quote that was available prior to the trading pause (*e.g.,* a quote was resting on the book prior to the trading pause), is widely set at $10 × $90
6. The reference price upon resumption is $50 (mid-point of BBO)
7. The SIP will use this reference price and publish LULD bands of $45 × $55 (*i.e.,* far away from BBO prior to the halt)
8. The bands will be calculated correctly, but the $50 reference price is subsequently determined to be incorrect as the price clearly deviated from where it previously traded prior to the trading pause

[24] FINRA notes that the ''resumption of trading without an auction'' provision of the proposed rule text applies only to securities that enter a trading pause pursuant to LULD and does not apply to a corporate action or new issue.

[25] Using transaction data reported to the FINRA OTC Reporting Facility, FINRA disseminates via the Trade Data Dissemination Service a final closing report for OTC equity securities for each business day that includes, among other things, each security's closing last sale price.

[26] *See* LULD Plan, Section I(U) and V(C)(1).

9. The new reference price would be $22 (*i.e.,* the last effective price band that was in a limit state before the trading pause), and the LULD bands would be applied to determine if the executions should be cancelled as clearly erroneous

In all of the foregoing situations, FINRA would not have authority to review transactions as clearly erroneous without the proposed carveouts in paragraph (b)(1)(C) because the trades occurred within the LULD price bands (albeit LULD price bands that were calculated from an erroneous reference price). FINRA believes that removing the current ability for FINRA to review in these narrow circumstances would lessen investor protections.

Numerical Guidelines

Today, paragraph (b)(1) defines the numerical guidelines that are used to determine if a transaction is deemed clearly erroneous during normal market hours, or outside of normal market hours. With respect to normal market hours, trades are generally deemed clearly erroneous if the execution price differs from the reference price (*i.e.,* last sale) by 10% if the reference price is greater than $0.00 up to and including $25.00; 5% if the reference price is greater than $25.00 up to and including $50.00; and 3% if the reference price is greater than $50.00. Wider parameters are also used for reviews for multi-stock events, as described in paragraph (b)(2). With respect to transactions in leveraged ETF/ETN securities executed during normal market hours and outside of normal market hours, trades are deemed clearly erroneous if the execution price exceeds the normal market hours numerical guidelines multiplied by the leverage multiplier.

Given the changes described in this proposed rule change, FINRA proposes to amend the way that the numerical guidelines are calculated during normal market hours in the handful of instances where clearly erroneous review would continue to be available. Specifically, FINRA would base these numerical guidelines, as applied to the circumstances described in paragraph (b)(1)(A), on the percentage parameters used to calculate price bands, as set forth in Appendix A to the LULD Plan. Without this change, a transaction that would otherwise stand if price bands were properly applied to the transaction may end up being subject to review and deemed clearly erroneous solely due to the fact that the price bands were not available due to a systems or other issue. FINRA believes that it makes more sense to instead base the price bands on the same parameters as would otherwise determine whether the trade would have been allowed to execute within the price bands. FINRA also proposes to modify the numerical guidelines applicable to leveraged ETF/ETN securities during normal market hours. As noted above, the numerical guidelines will only be applicable to transactions eligible for review pursuant paragraph (b)(1)(A) (*i.e.,* to NMS stocks that are not subject to the LULD Plan). As leveraged ETF/ETN securities are subject to LULD and thus the percentage parameters will be applicable during normal market hours, FINRA proposes to eliminate the numerical guidelines for leveraged ETF/ETN securities traded during normal market hours. However, as no price bands are available outside of normal market hours, FINRA proposes to keep the existing numerical guidelines in place for transactions in leveraged ETF/ETN securities that occur outside of normal market hours.

FINRA also proposes to move existing paragraphs (b)(2) and (b)(3) to proposed paragraph (b)(2)(B) and (b)(2)(C), respectively, as multi-stock events and additional factors will only be subject to review if those NMS stocks are not subject to the LULD Plan or occur outside of normal market hours. Proposed paragraph (b)(2)(B) is substantially similar to existing paragraph (b)(2) except to update the opening language to limit application of paragraph (b)(2)(B) to multi-stock events occurring outside of normal market hours or eligible for review pursuant to paragraph (b)(1)(A). Proposed paragraph (b)(2)(C) is also substantially similar to existing paragraph (b)(3) except to update its application to executions occurring outside of normal market hours or eligible for review pursuant to paragraph (b)(1)(A).

Reference Price

As proposed, the reference price used would continue to be based on last sale and would be memorialized in proposed paragraph (c). Continuing to use the last sale as the reference price is necessary for operational efficiency as it may not be possible to perform a timely clearly erroneous review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. While this means that there would still be some differences between the price bands and the clearly erroneous parameters, FINRA believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. FINRA also proposes to allow for an alternate reference price to be used as prescribed in proposed paragraphs (c)(1), (2), and (3). Specifically, the reference price may be a value other than the consolidated last sale immediately prior to the execution(s) under review: (1) in the case of multi-stock events involving twenty or more securities, as described in paragraph (b)(2)(B); (2) in the case of an erroneous reference price, as described in paragraph (b)(1)(C);[27] or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different reference price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred outside of normal market hours or are eligible for review pursuant to paragraph (b)(1)(A).

Procedures for Reviewing Transactions

Paragraph (a)(1) sets forth the procedures for reviewing transactions under FINRA Rule 11892 and currently provides that a FINRA officer may, on his or her own motion, review any OTC transaction involving an exchange-listed security arising out of or reported through a trade reporting system owned or operated by FINRA or FINRA Regulation and authorized by the Commission, provided that the transaction meets the thresholds set forth in paragraph (b), except as provided for in paragraphs (c) and (d). In light of the proposed structural changes to the Rule described above, FINRA proposes to amend paragraph (a)(1) to clarify that such review is only available for transactions occurring outside of normal market hours or eligible for review pursuant to paragraph (b)(1), and to conform and streamline other language and references throughout paragraph (a)(1).[28]

Appeals

Paragraph (a)(2) currently provides that if a FINRA officer acting pursuant to FINRA Rule 11892 declares any transaction null and void, each party

[27] As discussed above, in the case of (b)(1)(C)(1), FINRA would consider a number of factors to determine a new reference price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing. In the case of (b)(1)(C)(2), the reference price will be the last effective price band that was in a limit state before the trading pause.

[28] As noted above, given that the term ''normal market hours'' would now appear in paragraph (a)(1) of the Rule, FINRA proposes to define it here rather than in paragraph (b).

involved in the transaction shall be notified as soon as practicable by FINRA, and the party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest, and further provided that rulings made by FINRA in conjunction with one or more other self-regulatory organizations are not appealable. Consistent with the proposed structural changes to the Rule described above, FINRA proposes to amend paragraph (a)(2) to remove the limitation on appeals where the officer determines that the number of affected transactions is such that immediate finality is necessary, and to add a limitation on appeals where the decision is made by an officer under Supplementary Material .02 of FINRA Rule 11892 regarding transactions that occurred outside of the applicable Price Bands disseminated pursuant to the LULD Plan.[29]

Securities Subject To Limit Up-Limit Down Plan

FINRA proposes to renumber Supplementary Material .03 as Supplementary Material .02 based on the proposal to eliminate existing paragraph Supplementary Material .02, and to rename new Supplementary Material .02 to address transactions occurring outside of LULD price bands. Given that proposed paragraph (b)(1) defines the LULD Plan, FINRA also proposes to eliminate redundant language from proposed Supplementary Material .02. Finally, FINRA also proposes to update references to the LULD Plan and price bands so that they are uniform throughout the Rule, to update rule references throughout the paragraph to conform to the structural changes to the Rule described above, and to renumber paragraphs (b) and (c) of Supplementary Material .02 to paragraphs (a) and (b) given the proposed deletion of existing paragraph (a).

Multi-Day Event and Trading Halts

FINRA proposes to renumber paragraphs (c) and (d) to paragraphs (d) and (e), respectively, based on the proposal to add new paragraph (c). Additionally, FINRA proposes to modify the text of both paragraphs to reference the percentage parameters as well as the numerical guidelines. Specifically, the existing text of proposed paragraphs (d) and (e) provides that any action taken in connection with this paragraph will be taken without regard to the numerical guidelines set forth in this Rule. FINRA proposes to amend the rule text to provide that any action taken in connection with this paragraph will be taken without regard to the percentage parameters or numerical guidelines set forth in this Rule, with the percentage parameters being applicable to an NMS stock subject to the LULD Plan and the numerical guidelines being applicable to an NMS stock not subject to the LULD Plan.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on October 1, 2022.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As explained in the purpose section of this proposed rule change, the current pilot was implemented following the Flash Crash to bring greater transparency to the process for conducting clearly erroneous reviews, and to help assure that the review process is based on clear, objective, and consistent rules across the U.S. equities markets. FINRA believes that the amended clearly erroneous rules have been successful in that regard and have thus furthered fair and orderly markets. Specifically, FINRA believes that the pilot has successfully ensured that such reviews are conducted based on objective and consistent standards across SROs and has therefore afforded greater certainty to members and investors. FINRA therefore believes that making the current pilot a permanent program is appropriate so that equities market participants can continue to reap the benefits of a clear, objective, and transparent process for conducting clearly erroneous reviews. In addition, FINRA understands that the U.S. equities exchanges have or will also file largely identical proposals to make their respective clearly erroneous pilots permanent. FINRA therefore believes that the proposed rule change would promote transparency and uniformity across markets concerning review of transactions as clearly erroneous and would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest.

Similarly, FINRA believes that it is consistent with just and equitable principles of trade to limit the availability of clearly erroneous review during normal market hours. The LULD Plan was approved by the Commission to operate on a permanent rather than pilot basis. As a number of market participants have noted, the LULD Plan provides protections that ensure that investors' orders are not executed at prices that may be considered clearly erroneous. Further, amendments to the LULD Plan approved in Amendment Eighteen serve to ensure that the price bands established by the LULD Plan are ''appropriately tailored to prevent trades that are so far from current market prices that they would be viewed as having been executed in error.'' [31] Thus, FINRA believes that clearly erroneous review should only be necessary in very limited circumstances during normal market hours. Specifically, such review would only be necessary in instances where a transaction was not subject to the LULD Plan, or was the result of some form of systems issue, as detailed in the purpose section of this proposed rule change. Additionally, in narrow circumstances where the transaction was subject to the LULD Plan, a clearly erroneous review would be available in the case of (1) a corporate action or new issue or (2) a security that enters a trading pause pursuant to LULD and resumes trading without an auction, where the reference price is determined to be erroneous by a FINRA officer because it clearly deviated from the theoretical value of the security. Thus, eliminating clearly erroneous review in all other instances will serve to increase certainty for members and investors that trades executed during normal market hours would typically stand and would not be subject to review.

Given the fact that clearly erroneous review would largely be limited to transactions that were not subject to the LULD Plan, FINRA also believes that it

[29] In connection with these proposed changes, FINRA is also proposing conforming edits to paragraph (a) of FINRA Rule 11894 (Review by the Uniform Practice Code (''UPC'') Committee, which includes parallel provisions relating to the availability of appeals.

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] *See* Amendment Eighteen, *supra* note 9.

is necessary to change the parameters used to determine whether a trade is clearly erroneous. Specifically, due to the different parameters currently used for clearly erroneous review and for determining price bands, it is possible that a trade that would have been permitted to execute within the price bands would later be deemed clearly erroneous, if, for example, a systems issue prevented the dissemination of the price bands. FINRA believes that this result is contrary to the principle that trades within the price bands should stand, and has the potential to cause investor confusion if trades that are properly executed within the applicable parameters described in the LULD Plan are later deemed erroneous. By using consistent parameters for clearly erroneous reviews conducted during normal market hours and the calculation of the price bands, FINRA believes that this change would also serve to promote greater certainty with regards to when trades may be deemed erroneous.

Finally, the proposed rule change makes organizational updates to FINRA Rule 11892, as well as minor updates and corrections to the Rule to improve readability and clarity and conforming edits to FINRA Rule 11894.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while also amending those rules to provide greater certainty to members and investors that trades will stand if executed during normal market hours where the LULD Plan provides adequate protection against trading at erroneous prices. FINRA understands that the national securities exchanges have or will also file similar proposals, the substance of which are largely identical to this proposed rule change. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed under Rule 19b–4(f)(6) [34] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [35] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative on October 1, 2022. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow FINRA to coordinate its implementation of the revised clearly erroneous execution rules with the national securities exchanges, and will help ensure consistency across the SROs.[36] For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2022–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–027 and should be submitted on or before October 26,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21560 Filed 10–4–22; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

[36] *See* SR–CboeBZX–2022–37 (July 8, 2022).

[37] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34720; 812–15366]

Constitution Capital Private Markets Fund, LLC and Constitution Capital PM, LP

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

APPLICANTS: Constitution Capital Private Markets Fund, LLC (the ''Initial Fund''), and Constitution Capital PM, LP (the ''Adviser'').

FILING DATES: The application was filed on July 12, 2022, and amended on September 19, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2022, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua Deringer, *Joshua.deringer@faegredrinker.com.*

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated September 19, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: September 30, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21645 Filed 10–4–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95945; File No. SR–NYSEAMER–2022–44]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Exchange To Declare a Regulatory Halt

September 29, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 23, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the Exchange to declare a regulatory halt in a security that has not been listed on a national securities exchange immediately prior to the initial pricing based on the rules of its affiliate New York Stock Exchange LLC. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permit the Exchange to declare a regulatory halt in a security that has not been listed on a national securities exchange immediately prior to the initial pricing based on the rules of its affiliate New York Stock Exchange LLC (''NYSE''). More specifically, the Exchange proposes to add a new subsection (e) to Rule 7.18E (Halts) that would, except for a non-substantive conforming change, be identical to subsection (d) of NYSE Rule 123D (Halts in Trading).

Overview

Rule 7.18E governs halts in trading on the Pillar trading platform, and how orders are processed during halts, suspensions, or pauses. Rule 7.18E was adopted in connection with the Exchange's transition from a floor-based market to a fully automated market on the Pillar trading platform. At the time, halts were governed by Rule 123D—Equities (Openings and Halts in Trading), which was in turn based on NYSE Rule 123D.[4] In 2017, Rule 123D—Equities was designated as inapplicable to trading on Pillar and deleted in its entirety.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) and 79993 (February 9, 2017), 82 FR 10814 (February 15, 2017) (SR–NYSEMKT–2017–01).

[5] *See* Securities Exchange Act Release No. 82212 (December 4, 2017), 82 FR 58036 (December 8, 2017) (SR–NYSEAmer–2017–34).

The NYSE adopted its version of Rule 7.18 governing halts on the Pillar trading platform in 2015. In 2017, NYSE Rule 123D was designated as inapplicable to trading in Pillar. Following completion of the transition to Pillar in August 2019, the NYSE deleted NYSE Rule 123D as obsolete, but retained subsection (d), among others, governing initial listing regulatory halts.[6] As described below, the Exchange now proposes to adopt subsection (d) of NYSE Rule 123D.

Proposed Rule Change

The Exchange proposes to amend Rule 7.18E to adopt a regulatory halt condition for initial Exchange listings based on NYSE Rule 123D(d).

As proposed, new Rule 7.18E(d) would be titled ''Initial Listing Regulatory Halt.'' The proposed rule would provide that Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange immediately prior to the initial pricing, and that the regulatory halt will be terminated when the security opens. The rule is identical to NYSE Rule 123D(d) except for the removal of the reference to the Designated Market Maker (''DMM'') opening the security since NYSE American DMMs are not responsible for opening or closing individual securities on the Exchange. The Exchange believes that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have to the limited authority to declare a regulatory halt for security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange immediately prior to the initial pricing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that proposed Rule 7.18E(e) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide the Exchange with the authority to declare a regulatory halt in a security that the subject of an initial pricing on the Exchange of a security that has not previously been listed on a national securities exchange immediately prior to the initial pricing. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would promote fair and orderly markets and, in the case of securities where the initial listing is not a transfer from another national securities exchange, avoid potential price disparities or anomalies that may occur during any trading before the first transaction on the primary listing exchange. The Exchange therefore believes that having the proposed authority to declare a regulatory halt is consistent with the protection of investors and the public interest and would promote fair and orderly markets by helping to protect against volatility in pricing before the initial transaction on the primary listing exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the benefit to investors to halt trading in a security before the initial listing on the primary listing exchange outweighs any burden on competition that may result from a regulatory halt in such security.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will, without delay, permit the Exchange to initiate a regulatory halt in a security that is the subject of an initial pricing on the exchange in order to promote fair and orderly markets and avoid potential price disparities or anomalies. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[6] *See* Securities Exchange Act Release Nos. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) and 81225 (July 27, 2017), 82 FR 36033 (August 2, 2017) (SR–NYSE–2017–35); Securities Exchange Act Release No. 90750 (December 21, 2020), 85 FR 85769 (December 29, 2020) (SR–NYSE–2020–101). Rule 123D was also renamed ''Halts in Trading'' in 2020. *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–44, and should be submitted on or before October 26, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21561 Filed 10–4–22; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Policy on Enabling the Use of Unleaded Aviation Gasoline in Piston Engine Aircraft and Aircraft Engines Through the Fleet Authorization Process

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of a draft Policy Statement PS–AIR–20–2000–DRAFT, Enabling the Use of Unleaded Aviation Gasoline in Piston Engine Aircraft and Aircraft Engines through the Fleet Authorization Process. The FAA invites public comment on PS–AIR–20–2000–DRAFT.

DATES: The FAA must receive comments on these proposed documents by December 5, 2022.

ADDRESSES: PS–AIR–20–2000–DRAFT can be viewed and receive comment submissions through the FAA's Aviation Safety Draft Documents website, *https://www.faa.gov/aircraft/draft_docs.*

FOR FURTHER INFORMATION CONTACT: Ansel James, Research Coordination Branch, AIR–670, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 107 Charles W Grant Pkwy., Atlanta, GA 30354–3705; telephone and fax (404) 474–5427; email *ansel.s.james@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

PS–AIR–20–2000–DRAFT describes the Fleet Authorization process to allow eligible aircraft and aircraft engines to operate using qualified unleaded aviation gasoline (avgas). The use of unleaded avgas in aircraft has been addressed by Congress in section 565, *Aviation Fuel,* of the FAA Reauthorization Act of 2018, (Pub. L. 115–254). Section 565 includes language that requires the FAA to adopt a process, other than the traditional means of certification, to authorize the use of unleaded avgas in aircraft and aircraft engines. This policy statement defines that process.

Comments Invited

The FAA invites public comments on the draft policy statement concerning the proposed Fleet Authorization process for enabling the use of unleaded aviation gasoline in piston engine aircraft. The FAA will consider the public comments submitted during this comment period through the FAA's Aviation Safety Draft Documents website in finalizing PS–AIR–20–2000–DRAFT.

Issued in Washington, DC, on September 29, 2022.

Bruce E. DeCleene,

Deputy Director, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–21530 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2023 Scheduling Season

AGENCY: Department of Transportation, Federal Aviation Administration (FAA).

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 6, 2022, for Summer 2023 flight schedules at Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO).

DATES: Schedules should be submitted by October 6, 2022.

ADDRESSES: Schedules may be submitted to the Slot Administration Office by email to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Al Meilus, Manager, Slot Administration and Capacity Analysis, FAA ATO System Operations Services, AJR–G, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–2822; email *Al.Meilus@faa.gov.*

SUPPLEMENTARY INFORMATION: This document provides routine notice to

carriers serving capacity-constrained airports in the United States, including ORD, JFK, LAX, EWR, and SFO. In particular, this notice announces the deadline for carriers to submit schedules for the Summer 2023 scheduling season. The FAA deadline coincides with the schedule submission deadline established in the Calendar of Coordination Activities as published by the International Air Transport Association (IATA).[1]

General Information for All Airports

The FAA has designated JFK as an IATA Level 3 airport consistent with the Worldwide Slot Guidelines (WSG).[2] The FAA currently limits scheduled operations at JFK by order that expires on October 29, 2022.[3] The FAA intends to extend the JFK Order as well as a similar order that applies to LGA.[4]

The FAA has designated EWR, LAX, ORD, and SFO as Level 2 airports [5] subject to a schedule review process premised upon voluntary cooperation. The Summer 2023 scheduling season is from March 26, 2023, through October 28, 2023, in recognition of the IATA summer scheduling period.

The FAA is primarily concerned about scheduled and other regularly conducted commercial operations during designated hours, but carriers may submit schedule plans for the entire day. The designated hours for the Summer 2023 scheduling season are: at EWR and JFK, from 0600 to 2300 Eastern Time (1000 to 0300 UTC); at LAX and SFO, from 0600 to 2300 Pacific Time (1300 to 0600 UTC); and at ORD, from 0600 to 2100 Central Time (1100 to 0200 UTC). These hours are unchanged from previous scheduling seasons.

Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 and Level 3 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 and Level 3 airports. Some carriers at JFK manage and track slots through FAA-assigned Slot ID numbers corresponding to an arrival or departure slot in a particular half-hour on a particular day of week and date. The FAA has a similar voluntary process for tracking schedules at EWR with Reference IDs, and certain carriers are managing their schedules accordingly. The primary users of IDs are United States and Canadian carriers that have the highest frequencies and considerable schedule changes throughout the season and can benefit from a simplified exchange of information not dependent on full flight details. Carriers are encouraged to submit schedule requests at those airports using Slot or Reference IDs.

As stated in the WSG, schedule facilitation at a Level 2 airport is based on the following: (1) schedule adjustments are mutually agreed upon between the carriers and the facilitator; (2) the intent to avoid exceeding the airport's coordination parameters; (3) the concepts of historic precedence and series of slots do not apply at Level 2 airports (although WSG recommends giving priority to approved services that plan to operate unchanged from the previous equivalent season at Level 2 airports); and (4) the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters. Consistent with the WSG, the success of Level 2 in the United States depends on the voluntary cooperation of carriers.

The FAA considers several factors and priorities that are consistent with the WSG as it reviews schedule and slot requests at Level 2 and Level 3 airports, including (1) historic slots or services from the previous equivalent season over new demand for the same timings; (2) services that are unchanged over services that plan to change time or other capacity relevant parameters; (3) introduction of year-round services; (4) effective period of operation; (5) regularly planned operations over *ad hoc* operations; and (6) other operational factors that may limit a carrier's timing flexibility.

The FAA seeks to maintain close communications with carriers and terminal schedule facilitators on potential runway schedule issues or terminal and gate issues that may affect the runway times. In addition to applying these priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot-controlled and schedule-facilitated airports.

Consistent with the limited, conditional extension of COVID–19 related relief for the Summer 2022 scheduling season,[6] slots or schedules operated as approved on a non-historic or an *ad hoc* basis in Summer 2022 will be given priority over new requests for the same timings in Summer 2023, subject to capacity availability and consistent with established rules and policies in effect in the United States. This priority applies to slot or schedule requests for Summer 2023, which are comparable in timing, frequency, and duration to the *ad hoc* approvals made by the FAA for Summer 2022 and operated by the carrier as approved. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which met the conditions of the waiver during Summer 2022 and which seek to resume operating in Summer 2023. The FAA may consider this priority in the event that slots with the potential for historic precedence become available for permanent allocation by the FAA. Foreign air carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature.

Slot management in the United States differs in some respects from procedures in other countries. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity.

[1] *www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/calendar-coordination-activities.pdf.*

[2] The FAA generally applies the WSG to the extent there is no conflict with U.S. law or regulation. The FAA recognizes the WSG has been replaced by the Worldwide Airports Slot Guidelines (WASG) edition 1, effective June 1, 2020, and subsequently WASG edition 2, effective July 1, 2022. The WASG is published jointly by Airports Council International-World, IATA, and the Worldwide Airport Coordinators Group (WWACG). While the FAA is considering whether to implement certain changes to the Guidelines in the United States, it will continue to apply WSG edition 9.

[3] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008), as most recently extended 85 FR 58258 (Sept. 18, 2020). The slot coordination parameters for JFK are set forth in this Order.

[4] Operating Limitations at New York LaGuardia Airport, 71 FR 77854 (Dec. 27, 2006), as most recently extended 85 FR 38255, (Sep. 18, 2020). LGA is the equivalent of an IATA Level 3, coordinated airport. Schedule submissions at LGA are not required for the Summer 2023 scheduling season as slots at LGA are allocated and managed by the FAA under separate rules and processes.

[5] These designations remain effective until the FAA announces a change in the **Federal Register**.

[6] *See* FAA Notice of Limited, Conditional Extension of COVID–19 Related Relief for International Operations only for the Summer 2022 Scheduling Season, 87 FR 18057 (Mar. 29, 2022).

Generally, the FAA uses average hourly runway capacity throughput for airports and performance metrics in conducting its schedule review at Level 2 airports and determining the scheduling limits at Level 3 airports included in FAA rules or orders.[7] The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts on a schedule submission or slot request, the FAA may release information on slot allocation or similar slot transactions, or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change, and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some carriers may submit information on schedule plans that is both customarily and actually treated as private. Carriers that submit such confidential schedule information should clearly mark the information, or any relevant portions thereof, as proprietary information (''PROPIN''). The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

EWR General Information

Consistent with the WSG, carriers are asked for their voluntary cooperation to adjust schedules to meet the targeted scheduling limits in order to minimize potential congestion and delay. For the Summer 2023 scheduling season, the voluntary, targeted hourly scheduling limits remains at 79 operations and 43 operations per half-hour.[8] To help with a balance between arrivals and departures, the targeted maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. These targets are expected to allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. Consistent with general established practice at EWR, the FAA will accept flights above the limits if the flights were operated as approved, or treated as operated, by the same carrier on a regular basis in the previous corresponding season (*i.e.,* Summer 2022) and consistent with the recent DOT reassignment of 16 peak-hour runway timings.[9]

The FAA is aware that some carriers have recently operated flights without approved runway times, which is inconsistent with Level 2 airport principles. Carriers are reminded FAA approval for runway times is separate from the approval process for gates or other airport infrastructure and both are essential for the success of Level 2 at EWR. Schedule facilitation at Level 2 airports is designed to engender collaboration and gain mutual agreement between the carriers and the FAA regarding schedules and potential adjustments to stay within the performance goals and capacity limits of the airport and to mitigate delays and congestion that would result in the need for Level 3 slot controls.[10] As we emerge from the pandemic, the FAA expects that all carriers operating at EWR will respect the targeted hourly and half-hourly scheduling limits and continue to work cooperatively with the FAA in order to avoid unacceptable delays and other adverse operational impacts at the airport. The Level 2 process at EWR does not provide priority consideration for flights that were scheduled or operated without approved runway times.[11]

Issued in Washington, DC, on September 30, 2022.

Alyce Hood-Fleming,

Acting Vice President, System Operations Services.

[FR Doc. 2022–21693 Filed 10–3–22; 11:15 am]

BILLING CODE 4910–13–P

[7] The FAA typically determines an airport's average adjusted runway capacity or typical throughput for Level 2 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as ''called'' rates. The FAA also reviews the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

[8] 83 FR 21335 (May 9, 2018).

[9] See Department of Transportation Order 2022–7–1, Docket DOT–OST–2021–0103, served July 5, 2022, ''Reassignment of Schedules at Newark-Liberty International Airport''.

[10] *See* FAA Slot Administration website ''Slot Administration—U.S. Level 2 Airports'' available at: *https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_administration_schedule_facilitation/level-2-airports.*

[11] Change of Newark Liberty International Airport (EWR) Designation, 81 FR 19861 at 19862 (April, 6, 2016). Note: The WSG recognizes that some carriers might operate at times without approval from the airports schedule facilitator. Further, the Change of EWR Designation notice provides ''consistent with the WSG carriers would not receive historic status for such flights if the airport level changes from Level 2 to Level 3.''

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0362]

Medical Review Board (MRB); Notice of Partially Closed Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of partially closed meeting.

SUMMARY: This notice announces a meeting of the Medical Review Board (MRB).

DATES: The meeting will be held on Wednesday, October 19, 2022, from 9:30 a.m. to 4:30 p.m. ET. The meeting will be closed to the public from 9:30 a.m. to 12 p.m. and open to the public from 1 to 4:30 p.m. Requests for accommodations for a disability must be received by Wednesday, October 12, 2022. Requests to submit written materials for consideration during the meeting must be received no later than Wednesday, October 12, 2022.

ADDRESSES: The meeting will be held virtually for its entirety. Please register in advance of the meeting at *www.fmcsa.dot.gov/mrb.* Copies of the MRB task statement relating to review of medical examiner certification test questions and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/mrb* at least 1 week in advance of the meeting. Copies of the meeting minutes will be available at the website following the meeting. You may visit the MRB website at *www.fmcsa.dot.gov/mrb* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *mrb@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

MRB was created under the Federal Advisory Committee Act (FACA) in

accordance with section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [1] to provide FMCSA ''with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research'' (49 U.S.C. 31149(a)(1)). MRB operates in accordance with FACA under the terms of the MRB charter, filed November 25, 2021.

II. Agenda

The agenda will cover the following topics:

- Wednesday, October 19, 9:30 a.m. to 12 p.m. (Closed Session): Review of test questions to be used to determine eligibility of healthcare professionals to be certified as medical examiners and be listed on the National Registry of Certified Medical Examiners.
- Wednesday, October 19, 1 to 4:30 p.m. (Public Session):

1. An update by FMCSA's Office of Research on examining the seizure standard for CMV drivers.
2. An update by FMCSA's Office of Research on the effect of the length of medical certification on safety.

III. Public Participation

The morning of the meeting will be closed to the public due to the discussion of specific test questions to be used to certify medical examiners, which are not available for release to the public. Premature disclosure of secure test information would compromise the integrity of the examination and therefore exemption 9(B) of section 552b(c) of Title 5 of the United States Code justifies closing this portion of the meeting pursuant to 41 CFR 102–3.155(a). The afternoon of the meeting will be open to the public via virtual platform. Advance registration via the website is encouraged.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Wednesday, October 12, 2022.

Oral comments from the public will be heard during designated comment periods at the discretion of the MRB Chairman and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to MRB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–21564 Filed 10–4–22; 8:45 am]

BILLING CODE 4910–EX–P

[1] Public Law 109–59, 119 Stat. 1144, 1726 (2005).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and a vessel that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 29, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Entities

1. CLARA SHIPPING LLC (Arabic: كلارا للشحن ش.ذ.م.م) (a.k.a. CLARA SHIPPING), P.O. Box 554843, Dubai, United Arab Emirates; Suite 420, Oud Metha Offices, Oud Metha Road, Umm Hurair 2, P.O. Box 80, Dubai, United Arab Emirates; Suite 420, Oud Metha Offices, P.O. Box 93371, Dubai, United Arab Emirates; Website http://www.clarashipping.com; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 898106 (United Arab Emirates); Economic Register Number (CBLS) 11533152 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13846 of August 6, 2018, "Reimposing Certain Sanctions With Respect to Iran," 83 FR 38939, 3 CFR, 2019 Comp., p. 854 (E.O. 13846) for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

2. IRAN CHEMICAL INDUSTRIES INVESTMENT COMPANY PUBLIC JOINT STOCK (a.k.a. IRAN CHEMICAL INDUSTRIES INVESTMENT COMPANY (Arabic: شركت سرمايه گذارى صنايع شيميايى ايران); a.k.a. "ICIIC"), KM 15 of Isfahan-Teheran Road, Isfahan 8235144114, Iran; No. 16 Shahid Saidi St. Hafez Shirazi, Nelson Mandela St. Africa, Tehran 1967963735, Iran; Website www.iciiclab.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 1984; National ID No. 10100970248 (Iran); Business Registration Number 8027 (Iran) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

3. MIDDLE EAST KIMIYA PARS CO. (a.k.a. KIMIAYE PARS KHAVARMIANEH PETROCHEMICAL CO. (Arabic: پتروشيمى كيميای پارس خاورميانه); a.k.a. MIDDLE EAST KIMIAYE PARS CO.; a.k.a. "MEKPCO"), 2 J St., Abushahr St., Pars Energy Special Economic Zone, Petrochemical Square, Asalouyeh Port 7511895551, Iran; No. 3, 4th Floor, West Saro St., Corner of Aseman, Sa'adat Abad, Tehran 1998133734, Iran; Website www.mekpco.com; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 2007 [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

4. ML HOLDING GROUP LIMITED, Office No. 12 On 19F Ho King Comm Ctr No. 2-16 Fa Yuen St., Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 28 Sep 2020; C.R. No. 2981092 (Hong Kong) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.

5. SIERRA VISTA TRADING LIMITED, Unit A222, 3F, Hang Fung Industrial Phase 2, No 2G, Hok Yuen St., Hunghom, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; C.R. No. 3034154 (Hong Kong) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

6. SOPHYCHEM HK LIMITED, 21F, CMA Building, 64 Connaught Road Central, Hong Kong, China; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 29 Nov 2018; C.R. No. 2771275 (Hong Kong) [IRAN-EO13846] (Linked To: PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PERSIAN GULF PETROCHEMICAL INDUSTRY COMMERCIAL CO.

7. TIBALAJI PETROCHEM PRIVATE LIMITED (f.k.a. TIBA PETROCHEM PRIVATE LIMITED; a.k.a. TIBALAJI PETROCHEM PVT. LTD.), Unit No. 1518, C - Wing, One BKC, Bandra Kurla Complex, Bandra East, Mumbai 400051, India; Unit No. 1406, 14th Floor, C Wing, One BKC, Plot No. C66, G Block, Bandra Kurla Complex, Bandra East, Mumbai 400051, India; Website https://www.tibalaji.com/; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 09 Aug 2018; Tax ID No. AAGCT8857R (India); Trade License No. U24299MH2018PTC312643 (India); Company Number 335800EW87JAPGXYYV59 (India); Business Registration Number 312643 (India) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

8. VIRGO MARINE (Arabic: فيرقو مارين), Office 401, The Binary Tower Omniyat, Business Bay, Bur Dubai, Dubai, United Arab Emirates; Website www.virgo-marine.com;

Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 06 Sep 2021; Identification Number IMO 6256316; Registration Number 980285 (United Arab Emirates); Economic Register Number (CBLS) 11723718 (United Arab Emirates) [IRAN-EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13846 for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, TRILIANCE PETROCHEMICAL CO. LTD.

Vessel

1. GAS ALLURE (3E2066) Chemical/Oil Tanker Panama flag; Vessel Registration Identification IMO 9142150; MMSI 352898800 (vessel) [IRAN–EO13846] (Linked To: VIRGO MARINE).

Identified pursuant to E.O. 13846, as property in which VIRGO MARINE, an entity whose property and interest in property are blocked pursuant to E.O. 13846, has an interest.

Dated: September 29, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–21538 Filed 10–4–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Multiple Internal Revenue Service (IRS) Information Collection Requests Related to the Annual Return/Report of Employee Benefit Plan and Payment of Pension Plan Excise Taxes

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 the Annual Return/Report of Employee Benefit Plan.

DATES: Written comments should be received on or before December 5, 2022 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 1545–1610-Annual Return/Report of Employee Benefit Plan'' 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: Internal Revenue Service (IRS)

Title: Annual Return/Report of Employee Benefit Plan.

OMB Control Number: 1545–1610.

Form Number: 5500 and associated Schedules, and 5558.

Abstract: The Annual Return/Report of Employee Benefit Plan is an annual information return filed by employee benefit plans. The IRS uses this information for a variety of matters, including ascertainment whether a qualified retirement plan appears to conform to requirements under the Internal Revenue Code or whether the plan should be audited for compliance. Form 5500–EZ is an annual return filed by a one participant (owners/partners and their spouses) retirement plan or a foreign plan to satisfy certain annual reporting and filing requirements imposed by the Internal Revenue Code (Code). Form 5558 will be used by the IRS to grant extension request for filing the 5500 series and the 8955–SSA forms. The IRS uses this data to determine if the plan appears to be operating properly as required under the Code or whether the plan should be audited.

Current Actions: IRS is adding Form 5558 to the OMB approval for 1545–1610. Additionally, IRS is making the following revisions to the Forms 5558 to allow for electronic filing with the Department of Labor's (DOL) ERISA Filing Acceptance System (EFAST2).

Currently, Form 5558 is used by a filer to request an extension of time to file Form 5500 series, Form 8955–SSA as well as the Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans.* Form 5558 does not extend the time to pay the excise taxes. Any tax due for Form 5330 filers must be paid with Form 5558 for the application for an extension of time to file Form 5330.

The DOL EFAST2 system will not take the IRS tax payment. Thus, the IRS will revise Form 5558 to remove the items about the extension of time to file Form 5330. This will allow DOL to electronically collect the form. The Form 5558 will be used to solely request extensions on the Form 5500 series and Form 8955–SSA. The payment information from Form 5558 will be incorporated into Form 8868. The Form 8868 will be revised to allow extensions for Form 5330 and payment of excise tax due. Form 8868 will only allow for the extension to file, and will not extend the payment of the excise tax. The pension plan burden for the Form 8868 revision will be covered under 1545–0575.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations, individuals and households, not-for profit institutions, and farms.

Total Burden for 1545–1610

Estimated Total Number of Responses: 1,472,304.

Estimated Total Annual Burden Hours: 2,230,416.

Title: Return of Excise Taxes Related to Employee Benefit Plans and Application for Automatic Extension of Time to File an Exempt Organization Return.

OMB Control Number: 1545–0575.

Form Number: 5330 and 8868.

Abstract: Internal Revenue Code sections 4965, 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4979, 4979A, 4980 and 4980F impose various excise taxes in connection with employee

benefit plans. Form 5330 is used to compute and collect these taxes.

Current Actions: The Form 8868 will be revised to allow extensions for Form 5330—Return of Excise Taxes Related to Employee Benefit Plans. Form 8868 will only allow for the extension to file, and will not extend the payment of the excise tax.

The Form 8868 burden attributed to pension plans will be captured under OMB Control Number 1545–0575.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit organizations, individuals and households, not-for profit institutions, and farms.

Total Burden for 1545–0575

Estimated Number of Responses: 9,403.

Estimated Total Annual Burden Hours: 540,647.

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: September 28, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–21584 Filed 10–4–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Deputy Chief Counsel (Operations) of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Drita Tonuzi, Deputy Chief Counsel (Operations)
2. Robin Greenhouse, Division Counsel (Large Business & International)
3. Helen M. Hubbard, Associate Chief Counsel (Financial Institutions and Products)
4. Mark L. Hulse, Division Counsel (Tax Exempt and Government Entities, DC)
5. Rachel Levy, Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)
6. Thomas J. Travers, Associate Chief Counsel (Finance and Management)

This publication is required by 5 U.S.C. 4314(c)(4).

William M. Paul,

Principal Deputy Chief Counsel/Deputy Chief Counsel (Technical), Internal Revenue Service.

[FR Doc. 2022–21531 Filed 10–4–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Deputy Chief Counsel (Operations) of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Eric Nguyen, Deputy General Counsel—Chair
2. Nikole C. Flax, Deputy Commissioner, Large Business and International (IRS)
3. Thomas C. West, Jr., Deputy Assistant Secretary (Tax Policy)

Alternate: Edward T. Killen, Deputy Division Commissioner, Tax Exempt and Government Entities (IRS)

This publication is required by 5 U.S.C. 4314(c)(4).

Drita Tonuzi,

Deputy Chief Counsel (Operations), Internal Revenue Service.

[FR Doc. 2022–21533 Filed 10–4–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Engraving and Printing (BEP)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 4, 2022 to be assured of consideration.

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 submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of Engraving and Printing (BEP)

Title: Bureau of Engraving and Printing Features of Interest Survey for Banknote Equipment Manufacturers.

OMB Control Number: 1520–NEW.

Type of Review: Request for a new OMB Control Number.

Description: The Bureau of Engraving and Printing Feature of Interest Survey for Banknote Equipment Manufacturers (BEMs) is voluntarily completed by BEM companies to inform BEP's efforts to develop features to be included in

future Federal Reserve Note (FRN) redesigns. The survey gives BEM companies the opportunity to comment whether proposed features and/or FRN redesigns (a.k.a. Features of Interest) can be detected, validated, transported, and stored by their products. Banknote Equipment Manufacturers (BEMs) are companies that produce any type of equipment that handles banknotes for commercial purposes involving accept/reject decisions for FRNs.

Affected Public: Businesses or other for profits.

Estimated Number of Respondents: 50.

Frequency of Response: 3 per year.

Estimated Total Number of Annual Responses: 150.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 150.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–21610 Filed 10–4–22; 8:45 am]

BILLING CODE 4840–01–P

UNITED STATES SENTENCING COMMISSION

Requests for Applications; Practitioners Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of existing vacancies in the voting membership of the Practitioners Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to one of the vacancies to apply. The voting memberships covered by this notice are three circuit memberships (for the Seventh, Eighth, and Ninth Circuits) and one at-large membership. An applicant for voting membership of the Practitioners 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 2, 2022.

DATES: Application materials for voting membership of the Practitioners Advisory Group should be received not later than December 2, 2022.

ADDRESSES: An applicant for voting membership of the Practitioners 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.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4500, *pubaffairs@ussc.gov.* More information about the Practitioners Advisory Group is available on the Commission's website at *www.ussc.gov/advisory-groups.*

SUPPLEMENTARY INFORMATION: The Practitioners 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 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 the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice (*i.e.,* the circuit memberships for the Seventh, Eighth, and Ninth Circuits, and one at-large membership) 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, § 996(a); USSC Rules of Practice and Procedure 2.2(c), 5.4.)

Carlton W. Reeves,

Chair.

[FR Doc. 2022–21559 Filed 10–4–22; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible policy priorities for the amendment cycle ending May 1, 2023.

DATES: Public comment should be received by the Commission on or before October 17, 2022.

ADDRESSES: Comments should be sent 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—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4500, *pubaffairs@ussc.gov.*

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 sentencing 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 Commission provides this notice to identify possible policy priorities for the amendment cycle ending May 1, 2023. Other factors, such as legislation requiring Commission action, may affect the Commission's ability to complete work on any or all identified priorities by May 1, 2023. Accordingly, the Commission may continue work on any or all identified priorities after that date or may decide not to pursue one or more identified priorities. The Commission invites comment on the proposed priorities set forth below. Public comment should be sent to the Commission as indicated in the **ADDRESSES** section above.

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The proposed priorities for the amendment cycle ending May 1, 2023, are as follows:

(1) Consideration of possible amendments to § 1B1.13 (Reduction in Term of Imprisonment Under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)) to (A) implement the First Step Act of 2018 (Pub. L. 115–391); and (B) further describe what should be considered extraordinary and compelling reasons for sentence reductions under 18 U.S.C. 3582(c)(1)(A).

(2) Consideration of possible amendments to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses), § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), and related provisions in the *Guidelines Manual,* to implement the First Step Act of 2018 (Pub. L. 115–391).

(3) Consideration of possible amendments to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to (A) implement the Bipartisan Safer Communities Act (Pub. L. 117–159); and (B) make any other changes that may be warranted to appropriately address firearms offenses.

(4) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), including the circuit conflicts concerning (A) whether the government may withhold a motion pursuant to subsection (b) of § 3E1.1 (Acceptance of Responsibility) because a defendant moved to suppress evidence; and (B) whether an offense must involve a substance controlled by the Controlled Substances Act (21 U.S.C. 801 *et seq.*) to qualify as a ''controlled substance offense'' under subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

(5) Implementation of any legislation warranting Commission action.

(6) Continuation of its multiyear work on § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including possible amendments to (A) provide an alternative approach to the ''categorical approach'' in determining whether an offense is a ''crime of violence'' or a ''controlled substance offense''; and (B) address various application issues, including the meaning of ''robbery'' and ''extortion,'' and the treatment of inchoate offenses and offenses involving an offer to sell a controlled substance.

(7) In light of the Commission's studies on recidivism, consideration of possible amendments to the *Guidelines Manual* relating to criminal history to address (A) the impact of ''status'' points under subsection (d) of § 4A1.1 (Criminal History Category); and (B) the treatment of defendants with zero criminal history points.

(8) Consideration of possible amendments to the *Guidelines Manual* addressing 28 U.S.C. 994(j).

(9) Consideration of possible amendments to the *Guidelines Manual* to prohibit the use of acquitted conduct in applying the guidelines.

(10) Multiyear study of the *Guidelines Manual* to address case law concerning the validity and enforceability of guideline commentary.

(11) Continuation of its multiyear examination of the structure of the guidelines post-*Booker* to simplify the guidelines while promoting the statutory purposes of sentencing.

(12) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (*e.g.,* Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program), including consideration of possible amendments to the *Guidelines Manual* that might be appropriate.

(13) Consideration of other miscellaneous issues, including possible amendments to (A) § 3D1.2 (Grouping of Closely Related Counts) to address the interaction between § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor) and § 3D1.2(d); and (B) § 5F1.7 (Shock Incarceration Program (Policy Statement)) to reflect that the Bureau of Prisons no longer operates a shock incarceration program.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Carlton W. Reeves,

Chair.

[FR Doc. 2022–21551 Filed 10–4–22; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0795]

Agency Information Collection Activity: Barriers to Health Care for Women Veterans Survey

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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 extension 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 5, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–0795'' 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), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0795'' 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, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Barriers to Health Care for Women Veterans Survey.

OMB Control Number: 2900–0795.

Type of Review: Reinstatement of a currently approved collection.

Abstract: Legal authority for this data collection is found in Public Law 116–315, Sec. 5402—''Study of Barriers for Women Veterans to Receipt of Health Care from Department of Veterans Affairs,'' which requires VA to conduct an independent comprehensive study of the barriers to the provision of health care for women Veterans. Per Sec. 5402, this current study is to build on previous studies ''National Survey of Women Veterans in Fiscal Year 2007–2008'' and ''Study of Barriers for Women Veterans to VA Health Care 2015.'' The aim of the proposed survey is to better understand barriers women Veterans face accessing VA care, the comprehensiveness of care, and progress made in reducing barriers to VA healthcare for women Veterans since the previous study conducted in 2015. The data collected will allow VA to plan and provide better health care for women Veterans and to support reports to Congress about the status of women Veterans' health care.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,400 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,200.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21625 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0747]

Agency Information Collection Activity: Application for Disability Compensation and Related Compensation Benefits; Correction

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on Wednesday, September 28, 2022, that contained an error. The 30-day Public Comment notice identified inaccurate language in the abstract for the Agency Information Collection Activity. This document corrects the notice by replacing this inaccuracy with the correct language.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0747'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Correction

FR Doc. 2022–21017, published on Wednesday, September 28, 2022, at 87 FR 187, make the following corrections. On page 58945, under the heading ''Abstract,'' please correct and replace the language with, ''VA Form 21–526EZ is used to collect the information needed to process a claim for disability compensation and related compensation benefits. Though, this form was initially created to be used to submit fully developed claims (FDC), it has evolved into a standard claim form to be used for any benefit associated with disability compensation; to include new or initial claims and claims for increase.

The respondent burden for VA Form 21–526EZ has increased due to: the number of receivables averaged over the past year, general program changes—such as regulatory changes, and the continuing improvement of VA's electronic claims processing systems.

VA Form 21–526EZ has been updated, to include: new instructions on presumptive service connection; the GENDER question has been removed; a new Section IV: Exposure Information, including new questions that identify toxic exposures the claimant may have been exposed to during service; and an 'Addendum' has been added to provide additional space for disabilities if the claimant has more than the space provided in Section V: Claim Information.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21581 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0863]

Agency Information Collection Activity Under OMB Review: VA Acquisition Regulation (VAAR) Clause 852.237–73, Crime Control Act—Requirement for Background Checks

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of

information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: 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 Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0863.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave., Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0863'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA Acquisition Regulation (VAAR) Construction Provisions and Clauses.

OMB Control Number: 2900–0863.

Type of Review: Extension of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks renewal without changes of Office of Management and Budget (OMB) approved No. 2900–0863, VAAR clause 852.237–73, Crime Control Act—Requirement for Background Checks. Under the Crime Control Act of 1990 (34 U.S.C. 20351), each agency of the Federal Government, and every facility operated by the Federal Government, or operated under contract with the Federal Government, that hires, or contracts for hire, individuals involved with the provision to children under the age of 18 of childcare services shall assure that all existing and newly hired employees undergo a criminal history background check. VAAR clause 852.237–73, Crime Control Act—Requirement for Background Checks, is required in all solicitations, contracts, and orders that involve providing childcare services to children under the age of 18, including social services, health and mental health care, child-(day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the statute.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 45855 on July 29, 2022, pages 45855 to 45856.

Affected Public: Business or other for profit.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One per contractor's employee.

Estimated Number of Respondents: 1,500.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21588 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2., that the Advisory Committee on the Readjustment of Veterans will meet in person at 811 Vermont Avenue NW, Conference Room 3166, Washington, DC 20420, on November 2, 2022–November 4, 2022. The sessions will begin and end as follows:

Dates	Times
Wednesday, November 2, 2022.	8:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).
Thursday, November 3, 2022.	8:00 a.m. to 5:00 p.m. EST.
Friday, November 4, 2022.	8:00 a.m. to 12:00 p.m. EST.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the VA regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 13 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato, via email at *VHARCSPlanningPolicy@va.gov* or mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420.

Any member of the public seeking additional information should contact Mr. Barbato at the email address noted above.

Dated: September 29, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–21552 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Family, Caregiver and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, that the Veterans' Family, Caregiver and Survivor Advisory Committee will meet virtually on Friday, October 28, 2022. The meeting session will begin and end as follows:

Date	Time
October 28, 2022	12 to 3 p.m. Eastern Standard Time (EST).

The meeting is open to the public and will be conducted using Microsoft Teams. Please email *VEOFACA@va.gov* for an invitation link prior to October 26, 2022 or dial-in by phone (for audio only) 1–872–701–0185, United States, Chicago (Toll), Conference ID: 324 931 743#.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters related to: the need of

Veterans' families, caregivers and survivors across all generations, relationships and Veterans status; the use of VA care, benefits and memorial services by Veterans' families, caregivers and survivors, and opportunities for improvements to the experience using such services; VA policies, regulations and administrative requirements related to the transition of Servicemembers from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers and survivors; and factors that influence access to, quality of and accountability for services, benefits and memorial services for Veterans' families, caregivers and survivors.

On October 28, 2022, the agenda will include opening remarks from the Committee Chair and the Chief Veterans Experience Officer. There will be presentations to include updates from the Caregiver Support Program, the status of COVID–19 on the military and Veteran families, caregivers and survivors; and, the PACT Act update. The Committee will also discuss suggested recommendations that will be presented by the subcommittee Chairs.

Individuals wishing to share information with the Committee should contact the VEO Federal Advisory Committee Team at *VEOFACA@va.gov* to submit a 1–2 page summary of their comments for inclusion in the official meeting record before October 26, 2022 at 5 p.m. (EST). Due to the time limitations of virtual meetings, public comments will be submitted prior to the meeting and distributed to the Committee before the designated meeting time on October 28, 2022.

Any member of the public seeking additional information should contact Betty Moseley Brown (Designated Federal Official) *Betty.MoseleyBrown@va.gov* or 210–392–2505.

Dated: September 29, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–21556 Filed 10–4–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Agency Information Collection Activity Under OMB Review: Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: 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 Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0586.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0586'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks an extension of Office of Management and Budget (OMB) approval No. 2900–0586 for collection of information for both commercial and non-commercial item, service, and construction solicitations and contracts using VAAR Clause 852.211–72, Technical Industry Standards, as prescribed in CFR Title 48, Federal Acquisition Regulations System, VAAR 811.204–70, Contract clause. VAAR clause 852.211–72, Technical Industry Standards, requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as United States Department of Agriculture (USDA) or the USDA Institutional Meat Purchase Specifications (IMPS) and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as a label on beef product. In most cases, this requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the-items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation and contract will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87FR45856 on July 29, 2022, pages 45856 to 45857.

Affected Public: Business or other for profit.

Estimated Annual Burden: 559 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One per contract.

Estimated Number of Respondents: 1,118.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21591 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Agency Information Collection Activity Under OMB Review: VA Acquisition Regulation (VAAR) Construction Provisions and Clauses

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the

Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: 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 Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0422.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave., Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0422'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA Acquisition Regulation (VAAR) Construction Provisions and Clauses.

OMB Control Number: 2900–0422.

Type of Review: Extension of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks renewal without changes of Office of Management and Budget (OMB) approval No. 2900–0422 for five collections of information for the Department of Veterans Affairs Acquisition Regulation (VAAR) clauses, as follows:

- Clause 852.232–70, Payment Under Fixed-Price Construction Contracts (without NAS–CPM), requires construction contractors, without NAS–CPM, to submit a schedule of costs for work to be performed under the contract.
- Clause 852.232–71, Payment Under Fixed-Price Construction Contracts (including NAS–CPM), requires construction contractors, including NAS–CPM, to submit a schedule of costs for work to be performed under the contract.
- Clause 852.236–72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236–1, Performance of Work by the Contractor, to submit a statement designating the branch or branches of contract work to be performed by the contractor's own forces.
- Clause 852.236–80, Subcontracts and Work Coordination, requires construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which utility lines will fit into available space and relate to each other and to the existing building elements.
- Clause 852.243–70, Construction Contract Changes-Supplement, requires contractors to submit cost proposals for changes ordered by the contracting officer or for changes proposed by the contractor.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 45853 on July 29, 2022, page 45853.

Affected Public: Business or other for profit.

Estimated Annual Burden: 2,974 hours.

Estimated Average Burden per Respondent: 105 minutes.

Frequency of Response: More than quarterly.

Estimated Number of Respondents: 1,706.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21585 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Agency Information Collection Activity Under OMB Review: Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: 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 Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0586.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave., Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0586'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks an extension of Office of Management and Budget (OMB) approval No. 2900–0586 for collection of information for both commercial and non-commercial item, service, and construction solicitations and contracts using VAAR Clause 852.211–72, Technical Industry Standards, as prescribed in CFR title 48, Federal Acquisition Regulations System, VAAR 811.204–70, Contract clause. VAAR clause 852.211–72, Technical Industry Standards, requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as United States Department of Agriculture (USDA) or the USDA Institutional Meat Purchase Specifications (IMPS) and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as a label on beef product. In most cases, this requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the-

items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation and contract will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 45856 on July 29, 2022, pages 45856 to 45857.

Affected Public: Business or other for profit.

Estimated Annual Burden: 559 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One per contract.

Estimated Number of Respondents: 1,118.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–21586 Filed 10–4–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

National Credit Union Administration

The NCUA Staff Draft 2023–2024 Budget Justification; Notice

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2022–0145]

The NCUA Staff Draft 2023–2024 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA's staff draft, ''detailed business-type budget'' is being made available for public review as required by federal statute. The proposed resources will finance the agency's annual operations and capital projects, both of which are necessary for the agency to accomplish its mission. The briefing schedule and comment instructions are included in the **SUPPLEMENTARY INFORMATION** section.

DATES: Requests to deliver an in-person statement at the budget briefing must be received on or before October 12, 2022. Written statements and presentations for those scheduled to appear at the budget briefing must be received on or before 5 p.m. Eastern, October 14, 2022.

Written comments without public presentation at the budget briefing may be submitted by October 28, 2022.

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

- In-person presentation at public budget briefing: submit requests to deliver a statement at the briefing to *BudgetBriefing@ncua.gov* by October 12, 2022. Include your name, title, affiliation, mailing address, email address, and telephone number. Your statement must be submitted to the same email address by 5 p.m. Eastern, October 14, 2022. The NCUA Board Secretary will inform you if you have been approved to make a presentation, and you will be allotted five minutes during the budget briefing to deliver your remarks. Your presentation must be delivered in person at the public budget briefing.
- *Written comments without an in-person presentation:* submit written comments by October 28, 2022, through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number is NCUA–2022–0145. Follow the instructions for submitting comments.
- Copies of the NCUA Draft 2023–2024 Budget Justification and associated materials are also available on the NCUA website at *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

FOR FURTHER INFORMATION CONTACT: Eugene H. Schied, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION: The following itemized list details the documents attached to this notice and made available for public review:

I. The NCUA Budget in Brief
II. Introduction and Strategic Context
III. Key Themes of the 2023–2024 Budget
IV. Operating Budget
V. Capital Budget
VI. Share Insurance Fund Administrative Budget
VII. Financing the NCUA Programs
VIII. Appendix A: Supplemental Budget Information
IX: Appendix B: Capital Projects

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' Although 12 U.S.C. 1789(b)(1)(A) requires publication of a ''business-type budget'' only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the agency's entire staff draft 2023–2024 Budget Justification (staff draft budget) in this Notice.

The staff draft budget details the resources required to support NCUA's mission. The staff draft budget includes personnel and dollar estimates for three major budget components: (1) the Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The resources proposed in the staff draft budget will be used to carry out the agency's operations in 2023 and 2024. This document is a draft, staff-level budget proposal made available to the NCUA Board members and the public for their consideration and comment. The NCUA Board directed the NCUA Executive Director to develop the staff draft budget under delegated authority. The staff draft budget may change based on public comments, Board member decisions, and staff's ongoing consideration of estimates and programs that impact the budget.

The NCUA Chief Financial Officer will present the staff draft budget at a budget briefing open to the public and scheduled for Wednesday, October 19, 2022, at 10:00 a.m. Eastern at the NCUA headquarters building, 1775 Duke Street, Alexandria, Virginia 22314. Interested parties unable to attend in person may visit the agency's homepage (*www.ncua.gov*) to access the provided webcast link.

If you wish to participate in the briefing and deliver a statement, you must email a request to *BudgetBriefing@ncua.gov* by October 12, 2022. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. Statements must be delivered in person at the briefing. The NCUA will work to accommodate as many public statements as possible at the October 19, 2022 budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and you will be allotted five minutes during the budget briefing to deliver your remarks. A written copy of your statement must be delivered to the Board Secretary via email at *BudgetBriefing@ncua.gov* by 5 p.m. Eastern, October 14, 2022. In addition to delivering their remarks at the budget briefing, registered presenters will be provided the opportunity to ask questions of NCUA staff about the staff draft budget. The initial round of questions will be limited to 5 minutes per presenter, and one subsequent round of questions, limited to 5 minutes per presenter, may be permitted by the Chairman if time allows.

Written comments on the staff draft budget without an in-person presentation will also be accepted by October 28, 2022, through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number is NCUA–2022–0145. Commenters should follow the portal instructions for submitting comments.

All comments should provide specific, actionable recommendations about the staff draft budget rather than general remarks. The Board will review and consider any comments from the public prior to approving the NCUA 2023–2024 budget.

By the National Credit Union Administration Board on September 29, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

I. The NCUA Budget in Brief

Proposed 2023 and 2024 Budgets

The National Credit Union Administration's (NCUA) 2022–2026 Strategic Plan sets forth the agency's goals and objectives that form the basis for determining resource needs and allocations. The annual budget provides the resources to execute the strategic plan, to implement important initiatives, and to undertake the NCUA's major programs: examination and supervision, insurance, credit union

development, consumer financial protection, and asset management.

2023–2024 NCUA BUDGET* RESOURCES

Budget	2022 Board Approved Budget	2023 Requested Budget	Change (2022–2023)	Change Percent (2022–2023)	2024 Requested Budget	Change (2023–2024)	Change Percent (2023–2024)	2022 Pos**	2023 Pos**	2024 Pos**	Position Change (22–23)	Position Change (23–24)
Operating Budget	$ 320,138,000	$ 350,817,278	$ 30,679,278	9.6%	$ 388,199,518	$ 37,382,240	10.7%	1,196	1,221	1,243	25	22
Capital Budget	$ 13,069,000	$ 11,229,000	$ (1,840,000)	-14.1%	$ 11,234,000	$ 5,000	0.0%	-	-	-	-	-
Share Insurance Fund Admin. Budget	$ 6,246,000	$ 4,906,000	$ (1,340,000)	-21.5%	$ 4,304,000	$ (602,000)	-12.3%	-	-	-	-	-
Total	$339,453,000	$366,952,278	$27,499,278	8.1%	$403,737,518	$36,785,240	10.0%	1,196	1,221	1,243	25	22

* Budget information presented in this document excludes funding for the Central Liquidity Facility (CLF), which has its own budget that will be reviewed and decided upon separately by the CLF Board.

** The 2023–2024 budget reflects NCUA staffing levels as positions in order to simplify the presentation of current and proposed employee levels. Positions include all full-time and part-time positions as well as positions funded for only a portion of the year. In past years, the NCUA reflected budgeted staffing levels as full-time equivalents (FTEs), which is a presentation that accounts for staffing vacancies, part-time schedules, and other variability in employee levels. All position levels exclude positions funded by the CLF.

The NCUA's 2023–2024 budget justification includes three separate budgets: the Operating Budget, the Capital Budget, and the National Credit Union Share Insurance Fund (Share Insurance Fund) Administrative Budget. Combined, these three budgets total $367.0 million for 2023, which is 3.8 percent lower than the initial 2023 funding level approved by the NCUA Board as part of the two-year 2022–2023 budget, and 8.1 percent higher than the comparable level funded by the Board for 2022.

Three significant factors, when combined, account for the majority of the 8.1 percent increase in the total budget between 2022 and 2023:

1. A proposed net increase of 25 positions in permanent agency staffing compared to 2022, which will support critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. Included within these proposed new positions are 10 net new positions added to NCUA regional staff to increase the number of specialist examiners and supervisory specialists, four positions for the Office of Examination and Insurance to strengthen its credit and bank secrecy programs, two new positions for the Office of Consumer and Financial Protection to expand its consumer financial protection function, and two positions for the Office of Credit Union Resources and Expansion to support credit unions by providing technical advice about chartering and field of membership matters.

2. An increase of $8.9 million for current employee compensation in 2023 compared to 2022. This increase accounts for pay raises for the NCUA's employees as required by the current Collective Bargaining Agreement or successor agreements and expected inflationary cost increases for employee benefits.

3. An increase of $5.0 million in travel funding for 2023 compared to 2022. The agency expects a sustained reduction in remote and offsite examinations during the first half of 2023 with onsite examinations and related travel resuming. In addition, per trip costs are expected to be marginally higher in 2023 based on the impact of widely-reported price inflation affecting lodging, airfare, and car rentals. Overall, the travel budget for 2023 is funded at approximately 75 percent of pre-pandemic travel levels. The agency anticipates that travel will occur at a lower overall level than in previous years due to lessons learned during the pandemic about remote work and offsite examination and supervision procedures.

Recent economic trends, including higher inflation and robust labor markets, have also contributed to increased costs for the NCUA to conduct its work without a significant degradation in agency capabilities or staffing levels. Staffing levels for 2023 and 2024 reflect the agency's current staffing requirements and proposed staffing enhancements related to agency programs and initiatives.

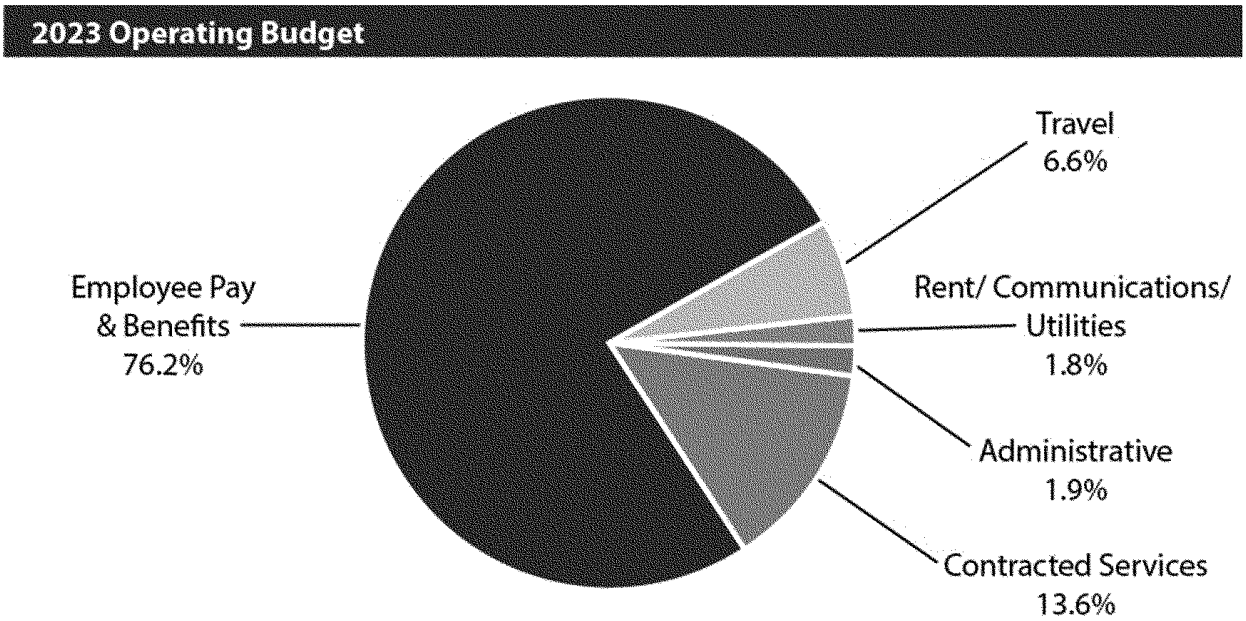
Operating Budget

The proposed 2023 Operating Budget is $350.8 million. Staffing levels would increase by a net 25 positions compared to the 2022 Board-approved budget.

The 2023 Operating Budget increases approximately $30.7 million, or 9.6 percent, compared to the 2022 Board-approved budget. The Operating Budget estimate for 2024 is $388.2 million and includes 22 additional positions compared to the 2023 level.

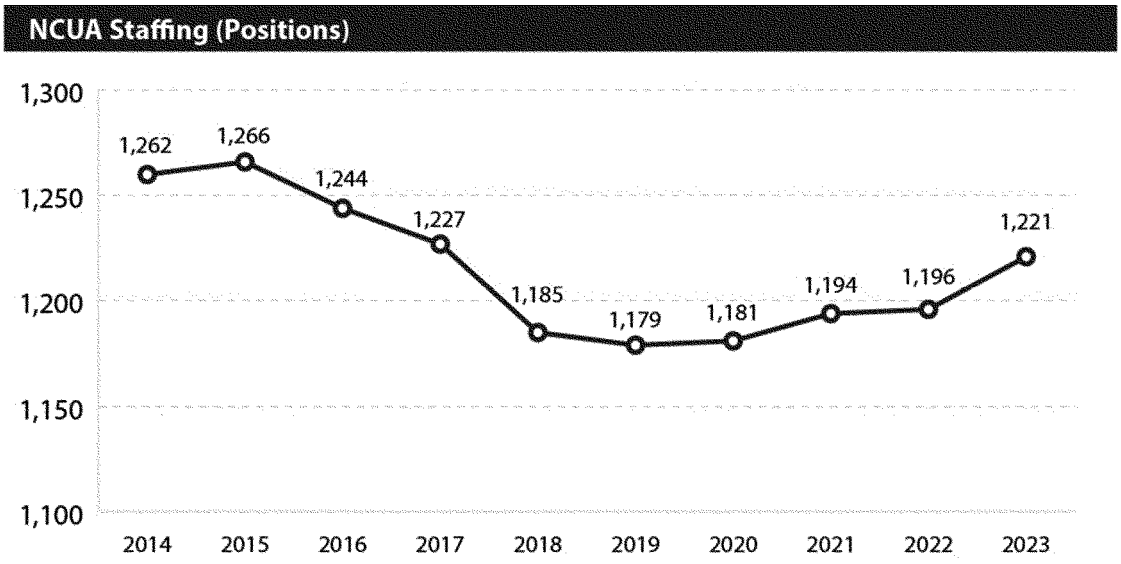
The following chart presents the major categories of spending supported by the 2023 budget, while specific adjustments to the 2022 Board-approved

budget are discussed in further detail in the following paragraphs.



Note: Minor rounding differences may occur in totals.

Total Staffing. The Operating Budget includes 1,221 positions in 2023. This is a net increase of 25 positions compared to the 2022 levels approved by the Board. Additional staff are requested in several areas as discussed later in this document. Despite significant credit union asset growth, total NCUA staffing has remained within a relatively narrow range since 2017, as shown in the chart below.



Note: NCUA staffing in this chart excludes positions funded by the Central Liquidity Facility.

The 2023–2024 budget reflects NCUA staffing levels as positions in order to simplify the presentation of current and proposed employee levels. The budget also makes permanent several previously authorized positions within the total NCUA staffing plan in order to ensure transparency about overall staffing levels. In past years, the NCUA reflected budgeted staffing levels as full-time equivalents (FTEs), which is a presentation that accounts for staffing vacancies, part-time schedules, and other variability in employee levels.

Pay and Benefits. Pay and benefits increase by $12.9 million in 2023, or 5.1 percent compared to 2022, for a total of $267.3 million. The cost of new positions included in the 2023 budget makes up $4.0 million of the $12.9 million increase.

The 2023 budget recommends a net increase of 25 new positions compared to 2022 staffing levels. Within this total, 10 net new positions are added to the NCUA regional staff to increase the number of specialist examiners and supervisory specialists. In addition, the budget funds two new positions for a new Office of the Ombudsman to provide a resource for issues facing credit unions and other public stakeholders, two new positions for the Office of Consumer and Financial Protection to expand its consumer financial protection function, three positions for the Office of Examination and Insurance to better align the office's operating divisions and strengthen its credit and bank secrecy programs, one new position for the Office of General Counsel to support regulatory and legislative functions, one new position for the Office of Minority and Women Inclusion to support the agency's special emphasis programs, and one new position for the Office of the Chief Financial Officer to strengthen planning and budget formulation processes.

The budget also makes permanent five positions previously authorized within the total NCUA staffing plan: one position for the Office of National Examination and Supervision to strengthen data modeling capabilities, two positions for the Office of Credit Union Resources and Expansion to support credit unions by providing technical advice about chartering and field of membership matters, one position in the Office of Examination and Insurance to strengthen analysis of risks within the credit union system, and one position for the Office of Ethics Counsel to consolidate the regional ethics program.[1]

Travel. The travel budget increases by $5.0 million in 2023, or 27.5 percent compared to 2022, for a total of $23.0 million. The increase in travel does not represent a typical annual travel adjustment because the 2022 budget was lower due to restricted travel during the pandemic. The 2023 budget assumes that travel will return to approximately 75 percent of its pre-pandemic levels. The NCUA will continue to seek to contain travel costs by use of offsite examination procedures and virtual options for training when suitable for the desired outcomes. Additionally, the NCUA plans to hold a national training conference for its staff in 2023 and more internal and external meeting events than in 2022.

Rent, Communications, and Utilities. The budget for rent, communications, and utilities increases by $1.1 million in 2023, or 21.8 percent compared to 2022, for a budget of $6.3 million. This funding pays for space-related costs, telecommunications services, data capacity contracts, and information technology network support. The 2023 increase is driven by the cost of a new office lease for the Southern Region office. The NCUA determined it would be more effective and offer more flexibility over the long term to sell the Southern Region facility and move its operations to a leased facility.

Administrative Expenses. Administrative expenses increase by $0.6 million in 2023, or 10.8 percent compared to 2022, for a budget of $6.7 million. The increase to the administrative expenses budget category largely results from an increase in the need for supplies, materials, printing, and subscription expenses expected as employees return to onsite work in 2023.

Contracted Services. The budget for contracted services increases by $11.1 million in 2023, or 30.3 percent compared to 2022, for a total budget of $47.6 million.[2] About $5 million of this increase is the result of a lower offset for 2023 than 2022 of unspent budget amounts from the prior year. The remaining $6.1 million of the increase reflects a combination of inflationary pressures on the cost of contracted services and some additional initiatives described in more detail later in this document. Contracted services funding pays for products and services acquired in the commercial marketplace and includes critical mission support services such as information technology hardware and software support, accounting and auditing services, and specialized subject matter expertise. The majority of funding in the contracted services category supports the NCUA's robust supervision framework and includes funding for tools used to identify and resolve risk concerns such as interest rate risk, credit risk, and industry concentration risk. Further, funding within contracted services is used to address new and evolving operational risks such as cybersecurity threats.

Capital Budget

The proposed 2023 Capital Budget is $11.2 million.

The 2023 Capital Budget is $1.8 million lower than the 2022 Board-approved budget.

The Capital Budget fully supports the NCUA's ongoing effort to modernize its information technology infrastructure and applications. The 2023 budget for capital projects decreases largely because the NCUA budgeted to replace its laptop computer fleet in 2022 and does not require additional investments for laptops in 2023. Additionally, funding in the Capital Budget for the MERIT examination system is lower in 2023 than 2022 and provides funding for routine maintenance and other modest system enhancements. Other information technology investments proposed in the 2023 Capital Budget include ongoing enhancements to information security, upgrades to decades-old legacy systems, refresh of the agency's mobile communications devices, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to achieve the agency's mission.

The Capital Budget also includes $1.5 million for NCUA's facilities.

Share Insurance Fund Administrative Expenses

The proposed 2023 Share Insurance Fund Administrative Budget is $4.9 million.

The 2023 Share Insurance Fund Administrative Budget is $0.1 million higher than the preliminary 2023 funding level approved by the Board in December 2021, but $1.3 million lower than the 2022 Board-approved budget. The Share Insurance Fund Administrative Budget funds the tools and technology used by the Office of National Examinations and Supervision (ONES) to oversee credit union-run stress testing for the largest credit unions, travel for state examiners attending NCUA-sponsored training, audit support for the Share Insurance Fund's financial statements, and certain insurance-related expenses for Asset Management and Assistance Center (AMAC) operations. The decrease in the Share Insurance Fund Administrative Budget is primarily driven by a reduction to the budget for state examiner travel and the completion of a one-time study by AMAC that was funded in the 2022 budget.

[1] The 2024 Staff Draft budget recommends an additional 22 new positions, including 17 regional specialists to complete the build-out of that program, one position for the Office of the Ombudsman, which is proposed to be established in 2023, and making permanent four Office of National Examination and Supervision positions previously authorized within the total NCUA staffing plan.

[2] The total budget for Contracted Services in 2023 before offsets of prior year unspent funds is estimated to be $65.6 million.

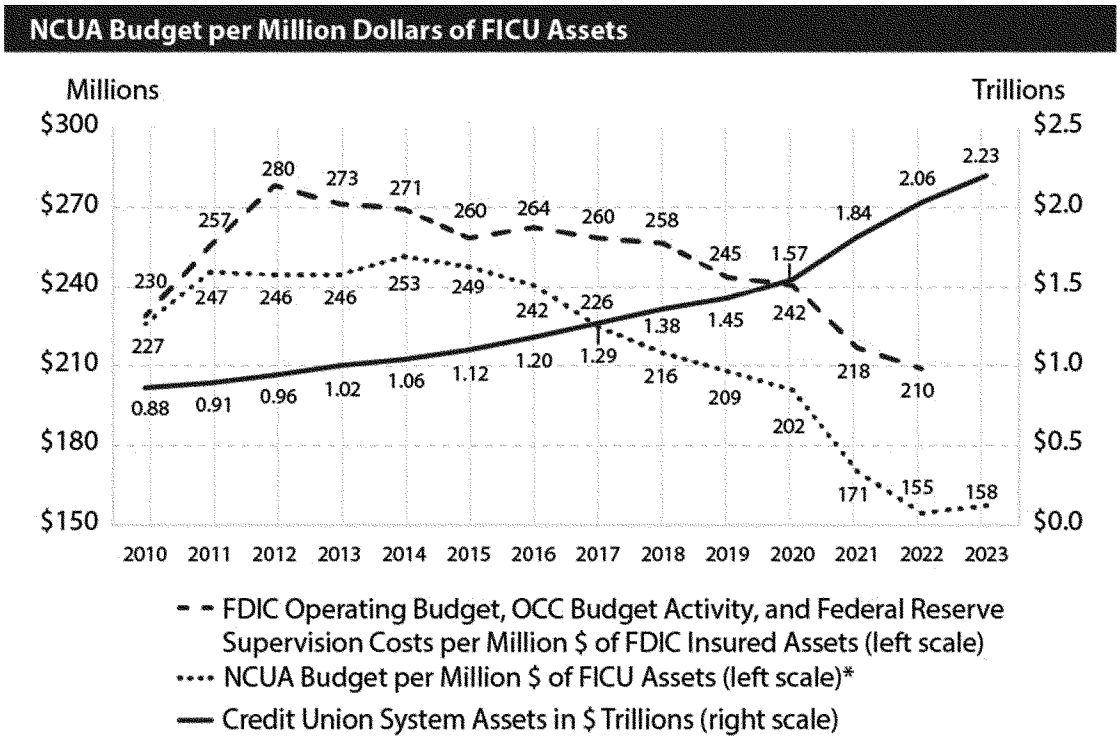
Additionally, the budget for the corporate resolution program continues to decrease in 2023 compared to 2022.

2023 Operating Budget—Use of Prior Year Surplus Funds

The ongoing impact of the COVID–19 pandemic resulted in lower-than-planned spending on NCUA employee travel in 2022, as the agency largely continued remote and offsite examinations and work. Additionally, the NCUA's vacancy rate for the first half of 2022 was higher than the past two years, and the robust labor market has contributed to hiring challenges. As presented in the 2022 midsession budget update at the July 2022 open meeting of the NCUA Board, the NCUA estimates that the agency will end 2022 having underspent the Board-approved budget by approximately $18.0 million. The 2023 budget proposes using the $18.0 million projected 2022 budget surplus to offset the costs of planned contracted services spending in 2023, reducing the agency's overall 2023 budget by the same amount.

Budget Trends

As shown in the following chart, the relative size of the NCUA budget (dotted line) has generally decreased when compared to balance sheets at federally insured credit unions (FICU, solid line).



Source: NCUA Annual Budgets, Call Reports, FDIC, OCC, and Federal Reserve financial reports
*Budget per million $ of FICU assets is calculated as the fiscal year's budget divided by the previous year's end-of-year assets (e.g. - FY2023 budget ($350.8M) / projected FICU assets as of 2022Q4 ($2.2T) = $158 of NCUA budget per $1M in FICU assets).

This trend illustrates the relative spending constraint the NCUA has attained in the last several years relative to the size of the credit union system and spending by other federal financial regulators (dotted line compared to dashed line).

Federal Compliance Costs

As a federal agency, the NCUA is required to devote significant resources to numerous activities required by federal law, regulations, or, in some cases, Executive Orders. These requirements drive how many of the agency's activities are implemented and the associated costs. These compliance activities affect the level of resources needed in areas such as information technology acquisitions and management, human capital processes, financial management processes and reporting, privacy compliance, and physical and cybersecurity programs.

Financial Management

Federal law, regulations, and government-wide guidance promulgated by the Office of Management and Budget (OMB), the Government Accountability Office (GAO), and the Department of the Treasury place numerous requirements on federal agencies, including the NCUA, regarding the management of public funds. Government-wide financial management compliance requirements address topics such as financial statement audits, improper payments, prompt payments, internal controls, and procurement audits, enterprise risk management, strategic planning, and public reporting of financial and other information.

Information Technology

There are numerous laws, regulations, and required guidance concerning information technology used by the federal government. Many of the requirements cover information technology security, such as the Federal Information Security Modernization Act. Other requirements cover records management, paperwork reduction, information technology acquisition, cybersecurity spending, accessible technology, and continuity.

Human Capital and Equal Opportunity

Like other federal agencies, the NCUA is subject to an array of human capital-related laws, regulations, and other mandatory guidance issued by the Office of Personnel Management, the Equal Employment Opportunity Commission, and OMB. Human capital compliance requirements include procedures related to hiring, management engagement with public unions and collective bargaining, employee discipline and removal procedures, required training for supervisors and employees, employee work-life and benefits programs, equal employment opportunity and required diversity and inclusion programs, and storage and retention of human resource records. The NCUA is also required by law to maintain comparability with other federal bank regulatory agencies when setting and adjusting the total amount of compensation and benefits for employees.

Security

The NCUA's security posture is driven by numerous legal and regulatory requirements covering the full range of security functions. The NCUA is required to comply with mandatory requirements for personnel security, physical security, emergency management and continuity, communications and information security, and insider threat standards. In addition to meeting specific legislative mandates, as a federal agency the NCUA is required to follow guidance from, but not limited to, the Office of the Director of National Intelligence, the Department of Defense, the Office of Personnel Management, and the Federal Emergency Management Agency.

Other Compliance Activities

The NCUA also has other general compliance activities that cut across numerous offices. For example, the NCUA expends resources complying with the Privacy Act, the Freedom of Information Act, the Government in the Sunshine Act, multiple laws and regulations related to government ethics standards, and various reporting and other requirements set forth by the Federal Credit Union Act and other statutes.

BILLING CODE 7535–01–P

2023 Budget in Brief: Operating Budget Summary

(dollars in millions)	Budget	Change from 2022 Budget	% Change*	Description
2023 Operating Budget	**$350.8**	**↑ $30.7**	**+ 9.6%**	
Total Staffing (positions)	**1,221**	**↑ 25**	**+ 2.1%**	The 2023 position level increases by 25 positions from 1,196 authorized by the Board in 2022.**
Budget Category				
Pay & Benefits	**$267.3**	**↑ $12.9**	**+ 5.1%**	The pay and benefits adjustment includes funding for the net proposed staffing increase of 25 positions for critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. Additionally, the increase in pay and benefits includes merit and locality pay changes anticipated for 2023.
Travel	**$23.0**	**↑ $5.0**	**+ 27.5%**	The travel budget increases by $5.0 million in 2023 compared to 2022. During 2022, travel was reduced due to the pandemic.
Rent, Communications, & Utilities	**$6.3**	**↑ $1.1**	**+ 21.8%**	Rent, communications, and utilities budgets maintain essential working space, telecommunications, data capacity, and network support. This budget increases primarily due to a new office lease for the Southern Region.
Administrative	**$6.7**	**↑ $0.6**	**+ 10.8%**	Administrative expenses primarily support operational requirements, Federal Financial Institution Examination Council fees, relocation expenses, and employee supplies. This budget increases in expectation of additional supply expenses as employees return to onsite work.
Contracted Services	**$47.6**	**↑ $11.1**	**+ 30.3%**	Contracted services reflect costs incurred when products and services are acquired in the commercial marketplace and include critical mission support services, such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise.

* Percent change is based on exact amounts shown below.
** Total staffing levels for 2023 and 2024 do not include five positions funded by the CLF.

2024 Budget in Brief: Operating Budget Summary

(dollars in millions)	Budget	Change from 2023 Budget	% Change*	Description
2024 Operating Budget	**$388.2**	**↑ $37.4**	**+ 10.7%**	
Total Staffing (positions)	**1,243**	**↑ 22**	**+ 1.8%**	The 2024 position level increases by 22 positions from 1,221 recommended in 2023.**
Budget Category				
Pay & Benefits	**$285.7**	**↑ $18.5**	**+ 6.9%**	The pay and benefits budget is projected to increase in 2024 to fund the compensation cost increases and new staff hired in 2023 and 2024.
Travel	**$22.9**	**↓ $0.2**	**- 0.8%**	Travel costs are projected to decrease because a national training conference is not planned for 2024.
Rent, Communications, & Utilities	**$6.0**	**↓ $0.3**	**- 4.1%**	Rent, communications, and utilities costs are projected to decrease because a national training conference is not planned for 2024.
Administrative	**$6.5**	**↓ $0.2**	**- 2.9%**	Administrative expenses are projected to decrease in 2024 because a national training conference is not planned for 2024.
Contracted Services	**$67.1**	**↑ $19.6**	**+ 41.1%**	Contracted services reflect costs incurred for products and services acquired in the commercial marketplace. The increase reflects that the level of surplus funds used to offset 2023 contract costs will not be available in 2024.

* Percent change is based on exact amounts shown below.
** Total staffing levels for 2023 and 2024 do not include five positions funded by the CLF.

BILLING CODE 7535–01–C

II. Introduction and Strategic Context

History

For more than 100 years, credit unions have provided financial services to their members. Credit unions are not-for-profit financial cooperatives created to serve a membership with a common bond.

President Franklin Roosevelt signed the Federal Credit Union Act into law in 1934 during the Great Depression. The law's goal was to make credit available to Americans and promote thrift through a national system of nonprofit, cooperative credit unions.

The NCUA is the independent federal agency established in 1970 by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the United States, the NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of the account holders in all federal credit unions and the vast majority of state-chartered credit unions.

As of June 30, 2022, the NCUA is responsible for the regulation and supervision of 4,853 federally insured credit unions, which have approximately 132.6 million members and more than $2.1 trillion in assets across all states and U.S. territories.[3]

Authority

Pursuant to the Federal Credit Union Act, authority for management of the NCUA is vested in the NCUA Board. It is the Board's responsibility to determine the resources necessary to carry out the NCUA's responsibilities under the Act.[4] The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate in accordance with the rules, regulations, or policies it establishes.[5]

Upon determination of the budgeted annual expenses for the agency's operations, the Board determines a fee schedule to assess federal credit unions. The Board gives consideration to the ability of federal credit unions to pay such a fee and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.[6] In December 2020, the Board approved a final rule with changes to its regulation and methodology for determining the fees due from federal credit unions.[7]

Pursuant to the law, fees collected are deposited in the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including the examination and supervision of federal credit unions.[8] In accordance with its authority[9] to use the Share Insurance Fund to carry out its insurance-related responsibilities, the Board approved an Overhead Transfer Rate methodology and authorized the Office of the Chief Financial Officer to transfer resources from the Share Insurance Fund to the Operating Fund to account for insurance-related expenses.

[3] Source: The NCUA quarterly call report data, Q2 2022.

[4] *See* 12 U.S.C. 1752a(a).

[5] *See* 12 U.S.C. 1766(i)(2).

[6] *See* 12 U.S.C. 1755(a)–(b).

[7] *See https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

[8] *See* 12 U.S.C. 1755(d).

[9] *See* 12 U.S.C. 1783(a).

Mission, Goals, and Strategy

The staff draft budget for 2023–2024 supports the agency's second year implementing its *2022–2026 Strategic Plan.* Throughout 2023 and 2024, the NCUA will continue fulfilling its mission of ''*protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance.*'' The agency's three strategic goals are:

1. Ensure a safe, sound, and viable system of cooperative credit that protects consumers.
2. Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services.
3. Maximize organizational performance to enable mission success.

The NCUA's strategic plan is the foundation for the agency's performance management and resource allocation processes. The annual performance plan functions as the agency's operational plan for each calendar year. It outlines the annual or short-term objectives, strategies, and corresponding performance goals and activities that contribute to the accomplishment of the agency's strategic goals. The NCUA budget provides the resources necessary for the agency to implement its strategic priorities and related programs and activities, to identify key challenges facing the credit union industry, and to leverage agency strengths to help credit unions address those challenges.

Appendix A provides additional information about how the budget aligns to the NCUA's strategic goals.

Organization and Structure

The NCUA operates its headquarters in Alexandria, Virginia, to administer and oversee its major programs and support functions. The NCUA's AMAC is located in Austin, Texas, and is responsible for liquidating credit unions and managing asset management estates. The three regional offices and Office of National Examinations and Supervision carry out the agency's supervision and examination program. The NCUA has credit union examiners responsible for a portfolio of credit unions covering all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

The following organizational chart [10] reflects the agency's currently approved structure. The staff draft budget includes a proposal for the Office of the Ombudsman to report directly to the Chairman. In addition, on January 1, 2023, AMAC will operate independently of the Southern Region. The map shows each region's geographical alignment.

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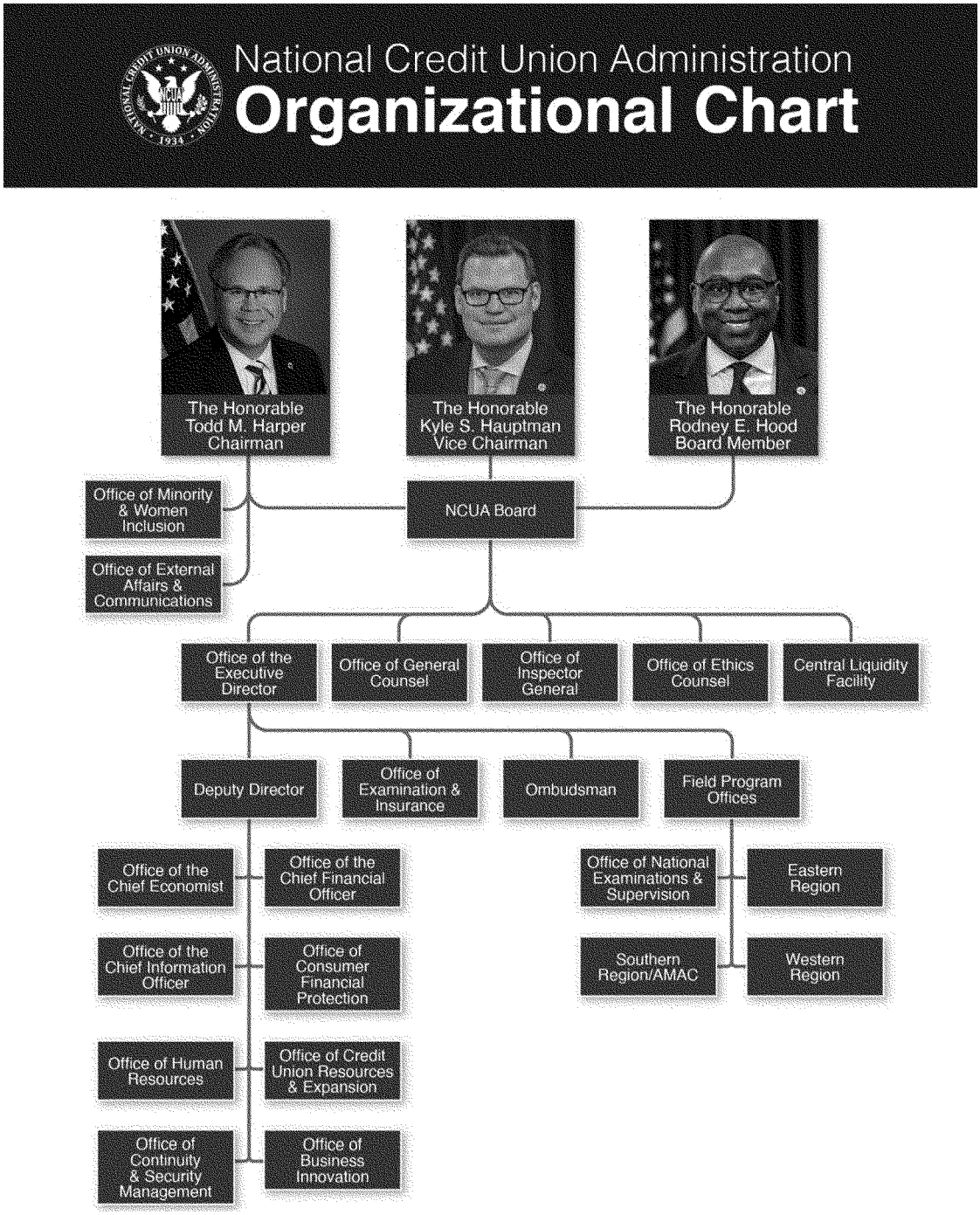
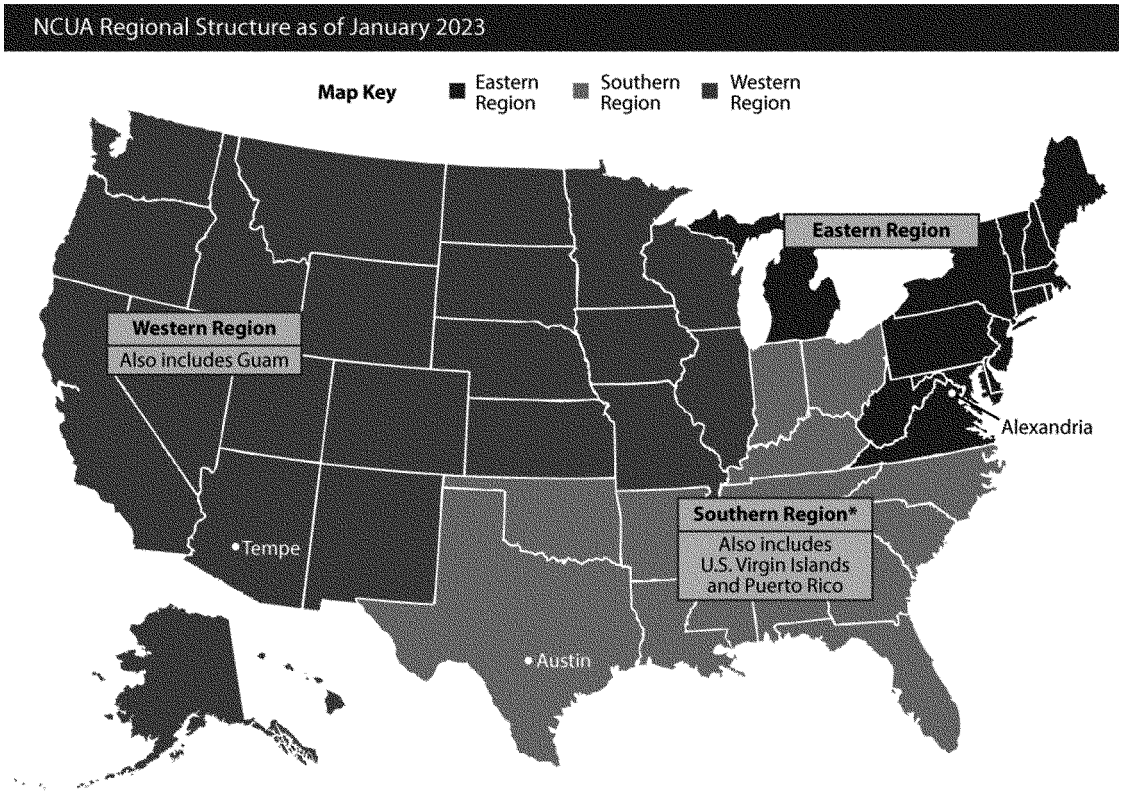
[10] The Board Secretary is an organizational component of the NCUA Board.


National Credit Union Administration
Organizational Chart
The Honorable Todd M. Harper Chairman
The Honorable Kyle S. Hauptman Vice Chairman
The Honorable Rodney E. Hood Board Member
Office of Minority & Women Inclusion
Office of External Affairs & Communications
NCUA Board
Office of the Executive Director
Office of General Counsel
Office of Inspector General
Office of Ethics Counsel
Central Liquidity Facility
Deputy Director
Office of Examination & Insurance
Ombudsman
Field Program Offices
Office of the Chief Economist
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Consumer Financial Protection
Office of Human Resources
Office of Credit Union Resources & Expansion
Office of Continuity & Security Management
Office of Business Innovation
Office of National Examinations & Supervision
Eastern Region
Southern Region/AMAC
Western Region



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The NCUA uses an extended examination cycle for well-managed, low-risk federal credit unions with assets of less than $1 billion. Further, the NCUA's examiners perform streamlined examination procedures for financially and operationally sound credit unions with assets less than $50 million. The Office of National Examinations and Supervision examines corporate credit unions and large consumer credit unions with assets over $15 billion.[11]

Budget Process—Strategy to Budget

The NCUA's budget process starts with a review of the agency's strategic framework, including its goals and objectives. The strategic framework sets the agency's direction and guides resource requests, ensuring the agency's resources and workforce are allocated and aligned to agency priorities and initiatives.

Each regional and central office director at the NCUA develops an initial budget request identifying the resources necessary for their office to support the NCUA's mission, goals, and objectives. These budgets are developed to ensure each office's requirements are individually justified and remain consistent with the agency's overall strategic framework.

One of the primary inputs in the development process is a comprehensive workload analysis that estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the budget year. The workload estimates are then refined by regional managers and further reviewed by NCUA executive leadership for the annual budget proposal. The workload analysis accounts for the efforts of over 66 percent of the NCUA workforce and is the foundation for the budgets of the regional offices and ONES.

In addition to the workload analysis, from which central office budget staff derive related personnel and travel cost estimates, each NCUA office submits estimates for fixed and recurring expenses, such as for employee travel, rental payments for leased property, operations and maintenance for owned facilities or equipment, supplies, telecommunications services, major capital investments, and other administrative and contracted services costs.

Because information technology investments impact all offices within the agency, the NCUA has established an Information Technology Oversight Council (ITOC). The ITOC considers, analyzes, and prioritizes major information technology investments to ensure they are aligned with the NCUA's strategic framework. These focused reviews result in a mutually agreed-upon budget recommendation to support the NCUA's top short-term and long-term information technology needs and investment priorities.

Once compiled for the entire agency, all office budget submissions undergo thorough reviews by the responsible regional and central office directors, the Chief Financial Officer, and the NCUA's executive leadership. Through a series of presentations and briefings by the relevant office executives, the NCUA Executive Director formulates an agency-wide budget recommendation for consideration by the Board.

The NCUA Board has an ongoing commitment to transparency around the agency's finances and budgeting processes. As such, the Office of the Chief Financial Officer has made draft budgets available for public comment on the agency's website and solicited public comments before presenting final

[11] Effective January 1, 2023. *See https://www.ncua.gov/files/agenda-items/asset-threshold-final-rule-20220721.pdf.*

budget recommendations for the Board's approval. Furthermore, Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, enacted May 24, 2018, requires that the NCUA ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' To fulfill this requirement, the Board delegated to the Executive Director the authority to publish the draft budget before submitting it for Board approval.

This 2023–2024 staff draft budget justification document includes comparisons to the Board approved 2022–2023 budget and describes the major spending items in each budget category to provide transparency and promote understanding of the use of budgeted resources. Estimates are provided by major budget category, office, and cost element.

The NCUA also posts supporting documentation for its budget request on the NCUA website to assist the public in understanding its budget development process. The staff draft budget for 2023 represents the NCUA's projections of operating and capital costs for the year and is subject to approval by the Board.

Commitment to Financial Stewardship

The NCUA funds its activities through operating fees levied on all federal credit unions and through reimbursements from the Share Insurance Fund, which is funded by both federal credit unions and federally insured, state-chartered credit unions. The Overhead Transfer Rate calculation determines the annual amount that the Share Insurance Fund reimburses the Operating Fund to pay for the NCUA's insurance-related activities. At the end of each calendar year, the NCUA's financial transactions are subject to audit in accordance with Generally Accepted Government Auditing Standards.[12]

The Board and the agency are committed to providing transparency and sound financial stewardship. In recent years, the NCUA Chief Financial Officer, with support and direction from the Executive Director and Board, has worked to improve the NCUA's financial management, financial reporting, and budget processes. These efforts have resulted in the NCUA being recognized by the Association of Government Accountants with a Certificate of Excellence in Accountability Reporting for each of its past four annual reports.

The NCUA is the only Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) agency that publishes a detailed draft budget in the **Federal Register** and solicits public comments on it at a meeting with its Board and other agency leadership.

The NCUA's 2023–2024 staff draft budget justification conforms with federal budgetary concepts, which increases transparency of the agency's planned financial activity. The NCUA first revised its financial presentations for such consistency in its 2018–2019 budget.

The NCUA works diligently to maintain strong internal controls for financial transactions, in accordance with sound financial management policies and practices. Based on the results of the NCUA's assessments conducted through the course of 2021, the agency provided an unmodified Statement of Assurance (signed February 15, 2022) that its management had established and maintained effective controls to achieve the objectives of the Federal Managers Financial Integrity Act and OMB Circular A–123. Specifically, the NCUA supports the internal control objectives of reporting, operations, and compliance, as well as its integration with overarching risk management activities. Within the Office of the Chief Financial Officer, the Internal Controls Assessment Team continues to mature the agency-wide internal control program, strengthen the overall system of internal controls, promote the importance of identifying risk, and ensure the agency has identified appropriate responses to mitigate identified risks. The agency's internal controls are designed and operated in accordance with the requirements of the GAO's *Standards for Internal Controls in the Federal Government* (Green Book).

Enterprise Risk Management

The NCUA uses an Enterprise Risk Management (ERM) program to evaluate various factors arising from its operations and activities (both internal to the agency and external in the industry) that can impact the agency's performance relative to its mission, vision, and performance outcomes. Agency priority risks include both internal considerations, such as the agency's control framework and information security posture, and external factors such as credit union diversification risk. All of these risks can materially impact the agency's ability to achieve its mission.

The NCUA's ERM Council provides oversight of the agency's enterprise risk management activities. Through the ERM program, established in 2015, the agency is identifying, analyzing, and managing risks that could affect the achievement of its strategic objectives.

Overall, the NCUA's ERM program promotes effective awareness and management of risks, which, when combined with robust measurement and communication, are central to cost-effective decision-making and risk optimization within the agency. This holistic evaluation of how the agency pursues its goals and objectives is guided by the agency's appetite for risk and considers resource availability or limitations. In addition, the agency's risk appetite helps the NCUA's employees align risks with opportunities when making decisions and allocating resources to achieve the agency's strategic goals and objectives.

The NCUA most recently published its enterprise risk appetite statement in its *2022–2026 Strategic Plan.*[13] The enterprise risk appetite statement is part of the NCUA's overall management approach.

The NCUA recognizes that risk is unavoidable and sometimes inherent in carrying out the agency's mandate. The NCUA is positioned to accept greater risks in some areas than in others; however, the risk appetite establishes boundaries for the agency and its programs.

III. Key Themes of the 2023–2024 Budget

Overview

The 2023–2024 budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues and responding to changes in economic conditions that may impact the credit union system. The NCUA employees are the agency's most valuable resource for achieving its mission, and the agency is committed to a workforce with integrity, accountability, transparency, inclusivity, and proficiency. The agency will continue investing in its workforce through training and development, ensuring employees have the skills they need to do their work effectively.

The 2023–2024 budget proposes investments across a range of agency priorities, including:

- Expanded and ongoing efforts to ensure robust cybersecurity in the credit union system and at the agency.
- Specialized examination staff dedicated to areas of emerging

[12] *See* 12 U.S.C. 1783(b) and 1789(b).

[13] *See https://www.ncua.gov/files/agenda-items/strategic-plan-20220317.pdf.*

complexity and risk in the credit union system. The 2023–2024 draft budget includes adding two new regional specialist programs, consumer compliance and bank secrecy, to the existing cadre or regional specialists.

- Resources for the NCUA's Advancing Communities through Credit, Education, Stability, and Support (ACCESS) initiative, which is focused on improving financial inclusion.
- Program and staff resources to provide greater assistance to small credit unions.
- Additional staff for continued enhancements to the NCUA's fair lending program.
- Increased offsite examination work and use of data analytics through the Virtual Examination project.
- Critical investments in new information technology systems and infrastructure, including enhancements to the agency's data reporting services and Model Examination and Risk Identification Tool (MERIT).

The efficiency and effectiveness of the agency's workforce depends upon the availability of modern analytical tools and the resiliency of the NCUA's information technology systems. The NCUA is committed to implementing its new technology responsibly and delivering secure, reliable, and innovative solutions. The investments funded in the NCUA's Capital Budget will provide the tools and technology the workforce needs to achieve the NCUA mission.

In November 2017, the NCUA Board approved funding to explore methods to conduct more examination work offsite—referred to as the Virtual Examination project. The project team continues its work to identify new and emerging data sources and methods to access the data, assessing advancements in analytical techniques, and considering how other technologies can be harnessed to automate or streamline various aspects of the examination process.

Since March 2020, the NCUA staff have conducted the majority of examination work while fully offsite, with only a few exceptions for the most problematic and challenging cases. The Virtual Examination project team is building upon this work by integrating lessons learned during the offsite posture. These lessons will help guide near-term changes to examination approaches and help inform areas needing further development by credit unions and the NCUA.

Cybersecurity

The NCUA's cybersecurity program focuses on two main efforts: supervision of credit union cybersecurity programs and protection of the agency's systems, assets, data, and mission capabilities. The combined 2023 budget for these efforts is approximately $21.3 million, which funds the costs of NCUA examiners and employees who carry out cybersecurity responsibilities, contract support for the agency's cybersecurity initiatives, and capital investments in cybersecurity tools and enhancements.

Cyberattacks continue to pose significant risks to the financial system. Because of continued attacks on the nation's financial sector and the broader national critical infrastructure, the NCUA places credit union cybersecurity as a top supervisory priority and enterprise risk objective.

The 2023 budget includes approximately $7.3 million for the costs of the NCUA's examination and support staff to administer its information technology and security examination program. These amounts include funding for the associated costs of the national program and policy office staff located in the Office of Examination and Insurance's Critical Infrastructure Division. In addition, the budget includes approximately $0.8 million for the costs of cybersecurity risk research, assessments, and information technology and security examination support tools.

The NCUA engages in interagency cybersecurity preparedness as members of the Federal Financial Institutions Examination Council (FFIEC) and the Financial and Banking Information Infrastructure Committee. The NCUA monitors cyber threats identified by federal and non-federal sources and shares relevant information about them with the credit union industry and financial sector partners.

In 2022, the NCUA piloted a new and updated information security examination program. The NCUA established a working group of regional and headquarters staff to review and incorporate changes into the program to be scalable to the institution's complexity and size. The NCUA is providing initial examiner training in the fourth quarter of 2022 and will deploy the improved program with the 2023 examination cycle.

Enhanced and continuing examiner training related to information security and evolving cyber risks is planned for 2023.

To help ensure credit union cybersecurity preparedness, the NCUA employs highly trained regional information security officers and other examination staff who evaluate credit union cybersecurity programs and protections.

The NCUA's approach to agency cybersecurity is based on requirements established by Federal statute such as the Federal Information Security Management and Federal Information Security Modernization Acts, and government-wide policy such as the National Institute of Standards and Technology's (NIST) Cybersecurity Framework (CSF), and Executive Order 14028, *Improving the Nation's Cybersecurity.* The 2023 budget includes approximately $13.2 million for the cost of compliance with and implementation of these requirements, of which $3.6 million is budgeted for capital investments. It is important to note that many government cybersecurity requirements are not necessarily expected of non-governmental entities; however, as a federal agency the NCUA is obligated to carry them out.

The 2023 budget invests in risk-based cybersecurity resources and technologies expected to enhance several of the NCUA's CSF functional areas and continue implementing the Executive Order through the following efforts:

- Implementing multi-factor authentication.
- Establishing a zero-trust architecture.
- Migrating identified databases to a secure cloud provider.
- Strengthening cyber threat and information sharing capabilities.
- Continuing maturity of agency-wide cybersecurity governance.

Support for Small Credit Unions

Small credit unions with less than $100 million in assets and Minority Depository Institutions (MDIs) are uniquely positioned to improve financial inclusion by offering their communities access to credit and other services. In 2022, the NCUA implemented a Small Credit Union and MDI Support Program designed to support and preserve these credit unions. This program provides dedicated resource hours for field staff to conduct this important work, and the 2023 staff draft budget proposes additional hours for the program.

Program assistance focuses on identifying available resources, providing training and guidance, and supporting credit union management in their efforts to address operational matters. Additional benefits of the program are expected to include:

- Greater awareness of the unique needs of small credit unions and MDIs

and their role serving underserved communities.

• Expanded opportunities for these credit unions to receive support through NCUA grants, training, and other initiatives.

• Furthering partnerships with organizations and industry mentors that can support small credit unions and MDIs.

Fair Lending

Fair and equitable access to credit is vital to the credit union system and members of credit unions. The NCUA uses onsite examinations, supervision contacts, and data analysis to ensure credit unions comply with fair lending laws and regulations. The staff draft budget proposes two additional positions for 2023 to continue to enhance the NCUA's fair lending program. Fair lending violations continue to be uncovered, and the additional staff dedicated to fair lending have helped conduct these reviews and ensure corrective actions are implemented.

ACCESS and Financial Inclusion

The financial services industry—of which credit unions are an important part—plays a key role in helping families achieve financial freedom by building generational wealth, helping entrepreneurs to get their small businesses off the ground, and helping to create jobs and strengthen communities. The NCUA has a role to play in making sure that credit unions can support overlooked or underserved areas.

The NCUA's ACCESS initiative—Advancing Communities through Credit, Education, Stability, and Support—began by reviewing NCUA regulations, processes, and procedures to expand opportunities for greater access to savings, credit, and other financial services provided by credit unions.[14] In 2022, the NCUA hired a dedicated ACCESS Coordinator to support this initiative. In addition, for the first time the ACCESS initiative is a part of the NCUA's 2022 annual summit focused on diversity, equity, and inclusion (DEI) in the credit union system. The summit will bring together professionals from credit unions and other financial inclusion industries to promote the value of DEI, share DEI and financial inclusion best practices, and discuss solutions to industry-specific challenges.

For 2023, the NCUA's ACCESS initiative will build on the work done in 2022 and continue to actively engage credit union industry leaders and stakeholders to identify additional ways to help new, small, low-income-designated, and MDI credit unions to grow and prosper.

NCUA Organizational Changes

In 2022, the NCUA Board approved two organizational changes that will take effect on January 1, 2023. First, the Board transferred responsibility for credit unions in the state of Ohio from the Eastern Region to the Southern Region. This transfer will help ensure that workloads remain generally consistent among the NCUA's three regional offices. Second, the Board separated the Asset Management Assistance Center (AMAC) from the Southern Region, reestablishing it as a distinct office led by the AMAC President. These changes are reflected in the office budget tables provided in Appendix A.

The 2023 staff draft budget also proposes creation of a new, distinct Office of the Ombudsman, which will better ensure effective outreach and engagement with credit unions and the NCUA's external stakeholders, such as the general public, trade associations, and other regulatory agencies. Appendix A includes a separate table illustrating the budget recommended for the Office of the Ombudsman.

Regulatory Improvements

The NCUA has undertaken a series of regulatory improvements in recent years and will continue to update and improve regulations to maintain a modern and effective regulatory framework. The NCUA's website includes additional detailed information about all proposed and final rules for the past several years.[15]

The NCUA's Annual Report includes the results of the regulatory reviews the agency completes on a yearly basis. The NCUA's current performance target for regulatory review is to review one-third of the agency's regulations annually.

IV. Operating Budget

Overview

The NCUA Operating Budget is the annual plan for resources required for the agency to conduct activities prescribed by the Federal Credit Union Act. These activities include: (1) chartering new federal credit unions; (2) approving field of membership applications of federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the National Credit Union Share Insurance Fund.

Staffing

The staffing levels proposed for 2023 reflect the resource requirements that support the NCUA's continued efforts to improve the examination process and enhance the efficiency and effectiveness of the supervisory process. The 2023–2024 budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues.

The 2023 budget supports a total agency staffing level of 1,221 positions.[16] This is a net increase of 25 positions, or 2.0 percent, compared to the agency's 2022 staffing level.

The proposed changes for the 2023 staffing level include:

• Increasing the NCUA regional staff by 10 net new positions, which includes adding 20 new specialist examiner positions and reducing 10 general examiner positions.

• Adding two positions to establish a new Office of the Ombudsman with dedicated staff and resources to facilitate better stakeholder understanding of NCUA's processes and more effective resolution of issues.

• Increasing by two positions the Office of Consumer Financial Protection to support the consumer financial protection program.

• Increasing by four positions the Office of Examination and Insurance to support an effective exam and supervision program, and management of the Share Insurance Fund.

• Adding one new position in the Office of Minority and Women Inclusion to support its mission of promoting diversity, equity, inclusion, and accessibility.

• Adding one new position in the Office of the Chief Financial Officer to support its performance and risk analysis program and improve budget formulation and analytic processes.

• Making permanent five positions previously authorized within the total NCUA staffing plan.

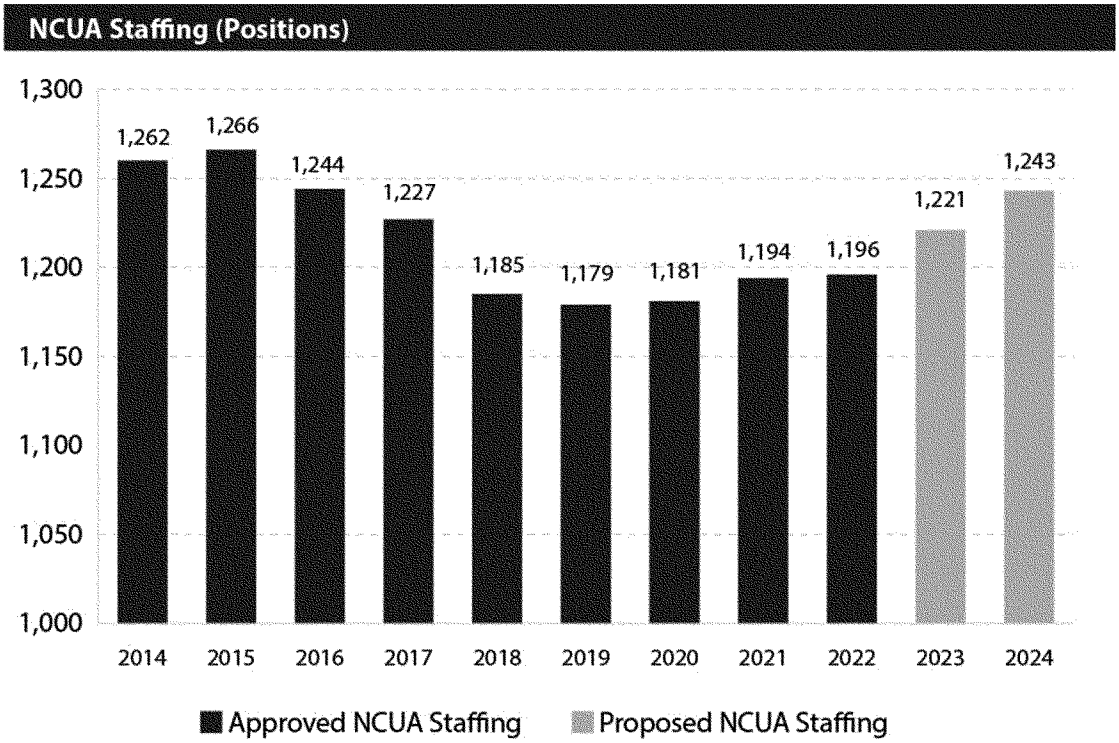
The new 2023 positions are described in greater detail in the following paragraphs, while the chart illustrates the NCUA's staffing levels in recent years.[17]

[14] *https://www.ncua.gov/access.*

[15] *See https://www.ncua.gov/regulation-supervision/rulemakings-proposals-comment.*

[16] Does not include five positions assigned to the Central Liquidity Facility in 2023.

[17] The 2023–2024 budget reflects NCUA staffing levels as positions in order to simplify the



Note: total NCUA staffing excludes positions funded by the Central Liquidity Facility.

Request for New Staff in 2023: +25 Positions (Net)

The budget includes funding for 25 net new positions in 2023, as detailed below:

Regional Specialist Examiners +10 Net Positions

The number of large, complex credit unions continues to increase through mergers and membership growth, which necessitates the need for a broader array of experts in the field to support the examination and supervision of these institutions. Two new specialist programs are needed, regional consumer compliance specialists and regional bank secrecy specialists. In addition, supervisory specialists are needed to manage the broader array of regional specialists. In total, the draft budget proposes 20 new related positions for 2023: eight new regional consumer compliance specialists, six new regional bank secrecy specialists, and six new supervisory specialists. As described later in this section, these new specialists positions will be offset by a reduction of 10 general examiner positions, reflecting the contributions that specialists make to the examination process.

Office of the Ombudsman +2 Positions

The 2023 budget proposes a new Office of the Ombudsman led by the Ombudsman. The Office of the Ombudsman will be responsible for outreach to credit unions and stakeholders, responding to inquiries and complaints from the public, and reviewing concerns raised by external parties. The office will also conduct training for NCUA staff, produce an annual report, provide feedback to the NCUA Board, and serve as a visible resource to credit union stakeholders and the public. As described in additional detail later in this section, the current Associate Ombudsman position will be reallocated to the new office from the Office of the Executive Director.

Fair Lending Analysts, Office of Consumer Financial Protection +2 Positions

These two new positions will continue to enhance the NCUA's fair lending function. The additional staff will focus on leading and performing fair lending examinations and supervision contacts and ensuring corrective action when required. They will also serve as technical advisors and a resource for the regions on fair lending and other consumer financial protection laws and regulations affecting credit unions. Additionally, these positions will participate on and support FFIEC subcommittees as well as other interagency and internal working groups.

Associate Director, Office of Examination and Insurance (E&I) +1 Position

This new position will enable a more equitable and logical alignment of the divisions within E&I. By distributing responsibilities for the office's divisions and its interagency working groups between the Associate Directors, the

presentation of current and proposed employee levels. In past years, the NCUA reflected budgeted staffing levels as FTEs, which is a presentation that accounts for vacant positions, part-time work, and other variability in employee levels. Although the actual number of persons employed at the NCUA varies throughout the year, using the count of positions is simpler.

Deputy Director for E&I will focus on delivering strategic program outcomes and be better positioned to support the Director. The more balanced alignment of divisions will also better equip Associate Directors to lead the office's operations, particularly in those areas with organizational changes or new management.

Senior Credit Specialist, Office of Examination and Insurance +1 Position

This new position will help address updates to policymaking, rulemaking, and training materials required for new and emerging issues in credit markets. In addition, this specialist will develop new research, analytics, and reporting deliverables focused on credit risk so the NCUA can meet its objective of measuring, monitoring, and mitigating credit concentration and other risks in the credit union system.

Supervisory Bank Secrecy Officer, Office of Examination and Insurance +1 Position

This new position will ensure E&I can meet the increased workload demands that result from the Anti-Money Laundering Act of 2020, fulfill training obligations, and comply with statutory requirements under the Anti-Money Laundering Act. The Supervisory Bank Secrecy Officer will also support the work required for interagency Bank Secrecy Act (BSA) workgroups, maintain and update NCUA's BSA program, and develop and provide examiner training about BSA matters.

Attorney Advisor, Office of General Counsel +1 Position

This new position will support the Regulations and Legislation division in the Office of General Counsel, which is responsible for legislative review and analysis, rulemaking and other regulatory activities, and interpretative analysis of existing NCUA regulations. The NCUA's schedule for reviewing all of its regulations results in a significant and growing workload, and this new position will help ensure the agency can sustain an effective and responsive regulatory program.

Senior Diversity and Equity Specialist, Office of Minority and Women Inclusion (OMWI) +1 Position

This new position will support OMWI's ongoing efforts to promote diversity, equity, and inclusion by managing the agency's special emphasis programs. This responsibility will include implementing, monitoring, and reporting on solutions identified in barrier analysis findings, coordinating OMWI activities in partnerships with the Office of Human Resources, developing OMWI policies, and advising OMWI management.

Budget and Management Analyst, Office of the Chief Financial Officer +1 Position

This new position will support efforts to improve and mature the NCUA's performance and risk analysis programs and its budgetary formulation and analytic processes. The position will be responsible for planning and analytic activities for both performance and budgetary deliverables, allowing the Office of the Chief Financial Officer to establish more engaged and responsive relationships with the NCUA's offices and programs.

Additional Permanent Adjustments to Authorized Staffing, Various Offices +5 Positions

In addition to the new positions proposed for 2023, the budget also includes resources to make the following permanent adjustments to the agency's staffing:

- Office of National Examinations and Supervision: one Senior Data Scientist position to continue the NCUA improvements to its supervisory stress testing models, strengthen its data-driven supervision approaches, and expand its risk analyses of ONES credit unions;
- Office of Credit Union Resources and Expansion: two Consumer Access Analyst positions to support credit unions with technical advice on field of membership policies and other questions related to share insurance, bylaws, and credit union membership.
- Office of Examination and Insurance: one position to strengthen analysis of risks within the credit union system as a whole and increase cross-training, rotation coverage, and allow for improved succession planning for potential retirements.
- Office of Ethics Counsel: one position to support consolidation of the regional ethics program.

Staff Realignments for Organizational Changes

The office position counts shown in the 2023 budget also reflect several organizational changes, as described below. These staff realignments do not alter the total position count for the agency.

- The Eastern Region will realign 19 existing positions to the Southern Region to support the transfer of examination and supervision responsibility for credit unions in the state of Ohio to the Southern Region.
- The Southern Region will realign 22 existing positions to a separate AMAC Office.
- The Office of the Executive Director will realign one existing position to the new Office of the Ombudsman.

Like any government agency, the NCUA manages its changing workload within its overall authorized budgetary and staff resource levels. The NCUA Board delegated to the Executive Director the authority to adjust staffing within total allocated resources to best respond to changing agency priorities and trends within the credit union system. The Executive Director must maintain total NCUA staffing at or below the resource levels approved within the budget, and promptly inform the Board of any significant changes to the agency's staffing allocations within the approved resource totals.

Special Surge Workforce

In 2021, the NCUA Board approved temporary COVID–19 hiring authority to respond to uncertainties in the credit union system by hiring and retaining for a term appointment, without a reduction to their federal annuity, individuals who have retired from federal service into a position classified in the Credit Union Examiner 0580 occupational series. The Board extended this authority through 2024, allowing those hired under the authority to serve for a maximum of four years. In addition, the National Defense Authorization Act, 5 U.S.C. 8344(l)(7), grants authority for the NCUA to hire retired annuitants on a part-time basis through December 31, 2024.

When combined, these authorities allow the NCUA to add staff who are already trained and have experience examining depository financial institutions so as to be better prepared to respond to any elevated levels of problem institutions that occur in 2023 and 2024. The agency anticipates hiring no more than 30 individuals using these temporary authorities and plans to fund these positions in 2023 by using unspent Operating Budget funds available from vacancies elsewhere in the organization.

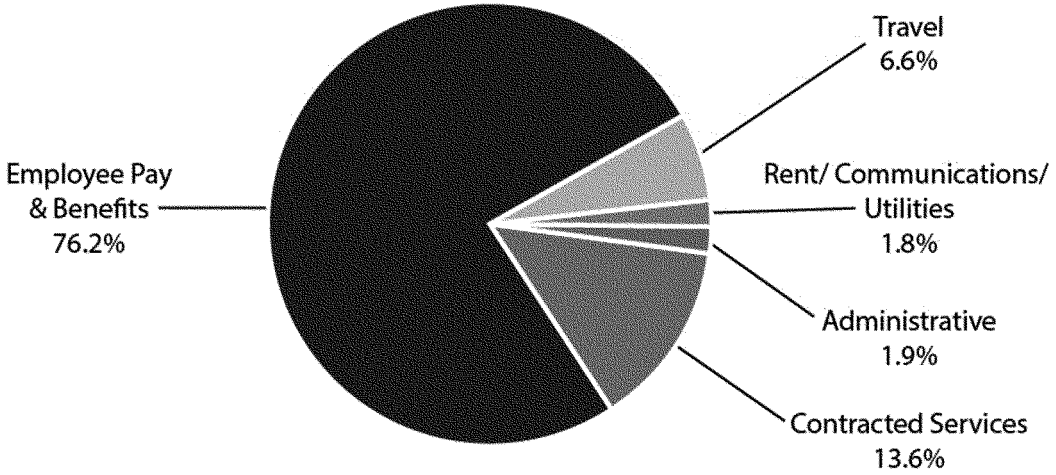
Budget Category Descriptions and Major Changes

There are five major expenditure categories in the NCUA budget. This section explains how these expenditures support the NCUA's operations and presents a transparent overview of the Operating Budget.

2023–2024 NCUA OPERATING BUDGET SUMMARY

Budget Cost Category	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Employee compensation	254,382,000	267,262,712	12,880,712	5.1%	285,726,852	18,464,140	6.9%
Salaries	176,073,000	184,739,746	8,666,746	4.9%	197,602,451	12,862,705	7.0%
Benefits	78,309,000	82,522,966	4,213,966	5.4%	88,124,401	5,601,435	6.8%
Travel	18,061,000	23,031,517	4,970,517	27.5%	22,851,517	(180,000)	-0.8%
Rent/Comm/Utilities	5,166,000	6,291,741	1,125,741	21.8%	6,031,741	(260,000)	-4.1%
Administrative	6,005,000	6,651,707	646,707	10.8%	6,459,807	(191,900)	-2.9%
Contracted Services	36,524,000	47,579,601	11,055,601	30.3%	67,129,601	19,550,000	41.1%
Total	**$ 320,138,000**	**$ 350,817,278**	**30,679,278**	**9.6%**	**$ 388,199,518**	**37,382,240**	**10.7%**

2023 Operating Budget



Note: Minor rounding differences may occur in totals.

Actual expenses for the Operating Fund are reported monthly in the Operating Fund Financial Highlights posted on the NCUA website. Share Insurance Fund financial reports and statements, which are also posted to the NCUA website, detail reimbursements made to the Operating Fund.

Salaries and Benefits

The budget includes $267.3 million for employee salaries and benefits in 2023. This change is a $12.9 million, or 5.1 percent, increase from the 2022 Board-approved budget. Salaries and benefits costs make up approximately 76 percent of the annual NCUA operating budget. There are three primary drivers of increased costs in 2023 for the salaries and benefits category:

- Merit and locality pay increases for the NCUA's employees are paid in accordance with the agency's current Collective Bargaining Agreement (CBA) and its merit-based pay system.
- Contributions for employee retirement to the Federal Employee Retirement System (FERS), which are set by the Office of Personnel Management and cannot be negotiated or changed by the NCUA. The mandatory FERS contribution rate increases total NCUA benefits costs by 2.6 percent in 2023 compared to 2022.
- Contributions for employee health insurance are also set by the Office of Personnel Management and cannot be negotiated or changed by the NCUA. The mandatory contribution increases total NCUA benefits costs by 5.5 percent in 2023 compared to 2022.

In 2023, the NCUA's compensation levels will continue to ''maintain comparability with other federal bank regulatory agencies'' as required by the Federal Credit Union Act.[18] The salaries

[18] The Federal Credit Union Act states that, ''In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other federal bank regulatory agencies.'' *See* 12 U.S.C. 1766(j)(2).

and benefits budget includes all employee pay raises for 2023, such as merit and locality increases, and those for promotions, reassignments, and other changes, as described below.

Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components. Under the current CBA, staff will be eligible to receive an average merit-based increase of 3.0 percent, and an additional locality adjustment ranging from 1.0 percent to 3.0 percent, depending on the geographic location. The salaries and benefits budget also accounts for potential increases associated with a new CBA being negotiated.

The first-year cost of the 25 net new positions added in 2023 is estimated to be $4.0 million. Specific increases to individual offices' salaries and benefits budgets will vary based on current pay levels, position changes, and promotions.

Personnel compensation at the NCUA varies across every office and region depending on work experience, skills, years of service, supervisory or non-supervisory responsibilities, and geographic locations. More than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce. Attracting a well-qualified workforce requires the agency to pay competitive salaries.

The Office of Personnel Management's assumptions for actuarial valuation of FERS remain unchanged in 2023, but remain a significant cost driver for the agency's salaries and benefits growth. Because the NCUA must contribute 18.4 percent of employee salaries to the retirement fund in 2023, the estimated impact on the NCUA budget is an increase of approximately $818,000 in mandatory payments, or approximately 6.0 percent of the salary and benefits growth compared to 2022 levels.

The average health insurance costs for the Federal Employees Health Benefits (FEHBP) program for 2023 are consistent with historical actual expenses. The annual Office of Personnel Management estimate for the 2023 government share of FEHBP premiums is expected to be released in October 2022, and the budget will be updated if there is any material change to estimated FEHBP costs. The employee salary and benefits category also includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation.

In past years, the NCUA adjusted its budget downward by an expected vacancy rate for positions because of a time lag between employee separations and hiring new staff. The NCUA continues to closely monitor the hiring and attrition trends within its workforce. In anticipation of the need for a full complement of staff in 2023, and because of ongoing efforts to accelerate the agency's hiring time, the 2023 budget does not include a vacancy adjustment.

The 2024 budget request for salaries and benefits is estimated at $285.7 million, an $18.5 million increase from the 2023 level. Included within this total is the full-year cost impact of new positions proposed for 2023 (approximately $5.3 million), $1.4 million for 17 additional regional specialists positions expected for 2024, $1.0 million to convert four existing ONES analyst positions to permanent staff positions, $125,000 for an additional Ombudsman position, merit and locality pay increases consistent with the CBA (approximately $7.4 million), and associated increases in benefits for all employees (approximately $3.3 million).

Travel

The 2023 budget includes $23.0 million for travel. This change is a $5.0 million, or 27.5 percent, increase to the 2022 Board-approved budget.

There are three primary reasons for the significant travel budget increase compared to the 2022 levels. First, the 2022 travel budget of $18.1 million was lower than historic travel spending levels because of the agency's budgeting assumption that pandemic-related travel restrictions would continue for part of 2022. Therefore, comparisons between 2022 and 2023 travel levels are not representative of typical annual travel adjustments.

Second, the NCUA expects the agency's staff will travel at a rate of approximately 75 percent of pre-pandemic levels in the upcoming year. Additionally, although fewer trips and events are planned, per trip costs are expected to be marginally higher based on the impact of widely-reported price inflation affecting lodging, airfare, and car rentals.

Finally, the NCUA plans to hold a national training conference for all NCUA staff in 2023 to support professional development and employee engagement. Each NCUA office has budgeted the expected travel-related costs.

The travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend part of their time traveling to conduct the examination and supervision program.

During the COVID–19 pandemic, the agency and its employees successfully transitioned to an offsite examination posture, developing new procedures and processes to continue examination and supervisory work. In 2023, the NCUA will continue to evaluate how it can conduct portions of examinations offsite, which should help constrain the growth of future travel budgets.

The NCUA staff also travel for routine and specialized training. In 2023, the NCUA expects its staff will attend a combination of in-person and virtual training to help reduce travel expenses.

The 2024 budget request for travel is estimated to be $22.9 million, or a 0.8 percent decrease compared to the 2023 level. This budget level reflects an expectation for modest travel-related cost inflation offset by a reduction to the 2024 travel budget for the national training conference planned for 2023.

Rent, Communications, and Utilities

The 2023 budget includes $6.3 million for rent, communications, and utilities. This is a $1.1 million increase, or 21.8 percent more than the 2022 Board-approved budget. The rent, communications, and utilities budget funds the agency's telecommunications and information technology network expenses and facility rental costs.

Telecommunication charges include leased data lines, domestic and international voice (including mobile), and other network charges. Telecommunication costs also include the circuits and any associated usage fees for providing voice or data telecommunications service between data centers, office locations, the internet, and any customer, supplier, or partner.

The primary increase to the 2023 rent, communications, and utilities budget is for a new office lease for the Southern Region office. After a condition assessment of the NCUA-owned building in Austin and an analysis of the area's commercial real estate market, the NCUA determined it would be more effective and offer more flexibility over the long term to move its operations to a leased facility. The NCUA Board will make a final determination about the

future real estate plan for the Southern Region office.

The rent, communications, and utilities budget category also includes the cost of the office utilities, meeting space rental for offsite events, postage expenses, and the office building lease for the Western Region, which is approximately $500,000 in 2023. The annual utility costs for the headquarters and regional offices are estimated at $461,000 for 2023.

The 2023 budget also includes approximately $1.0 million for examiner group meetings, credit union examiner training events, and event space and equipment rental costs for the national training conference.

The 2024 budget request for the rent, communications, and utilities category is estimated to be $6.0 million, or a 4.1 percent decrease compared to 2023. The $260,000 decrease is primarily due to a reduction in the 2024 budget for the national training conference to be held in 2023.

Administrative Expenses

The 2023 budget includes $6.7 million for administrative expenses. This is an increase of $647,000, or 10.8 percent, compared to the 2022 Board-approved budget. Recurring costs in the administrative expenses category include the annual reimbursement to the FFIEC, employee relocation expenses, recruitment and advertising expenses, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials.

As part of the FFIEC, the NCUA shares in costs for certain joint actions and services that affect the financial services industry. The staff draft budget will be updated for the final FFIEC budget estimate if it is available at the time the final budget is prepared.

The 2023 budget includes $1.3 million for employee relocations, an increase of $250,000 compared to the 2022 budget. Relocation costs are paid by the NCUA to employees who are competitively selected for a promotion or new job within the agency in a different geographic area than where they live.

The 2024 budget request for administrative services is estimated to be $6.5 million, or a 2.9 percent decrease primarily due to a reduction in the 2024 budget for the national training conference to be held in 2023.

Contracted Services

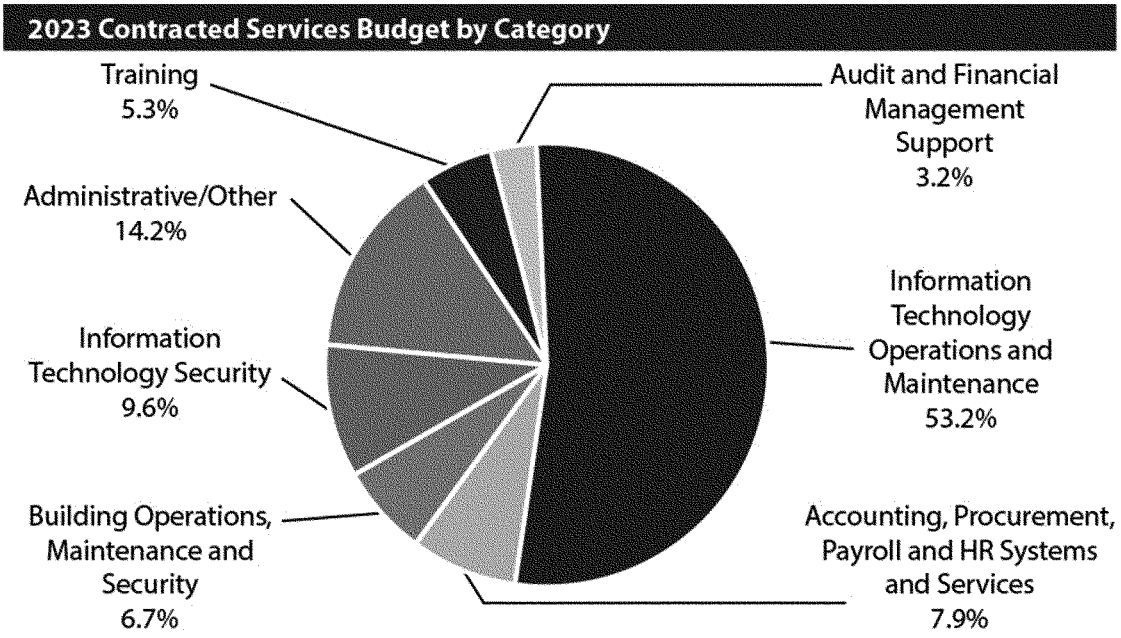
The 2023 budget includes $47.6 million for contracted services. This is an $11.1 million increase, or 30.3 percent, compared to the 2022 Board-approved budget. Similar to 2022, $18.0 million of unspent budget amounts from prior years will be used to pay for 2023 contracted services expenses. Therefore, the total planned amount for contracted services in 2022 is approximately $65.6 million.

The contracted services budget category includes the agency's costs incurred when products and services are acquired in the commercial marketplace. Acquiring specific expertise or services from contract providers is often the most cost-effective way for the NCUA to accomplish its mission. Such services include critical mission support such as information technology equipment and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on executing core mission requirements.

The majority of funding in the contracted services category supports the NCUA's robust supervision framework and includes funding for tools used to identify and resolve risk concerns such as interest rate risk, credit risk, and industry concentration risk, as well as by addressing new and evolving operational risks such as cybersecurity threats. Growth in the contracted services budget category results primarily from new operations and maintenance costs associated with capital investments, such as the Examination and Supervision Solution system commonly known as MERIT. Other costs include core agency business operation systems such as accounting and payroll processing, and various recurring costs, as described in the following seven major categories:

- Information Technology Operations and Maintenance (53.2 percent of contracted services)
  - Information technology network support services and help desk support
  - Contractor program and web support and network and equipment maintenance services
  - Administration of software products such as Microsoft Office, SharePoint, and audio-visual services
- Administrative Support and Other Services (14.2 percent of contracted services)
  - Examination and supervision program support
  - Technical support for examination and cybersecurity training programs
  - Equipment maintenance services
  - Legal services and other expert consulting support
  - Other administrative mission support services for the NCUA central office
- Accounting, Procurement, Payroll, and Human Resources Systems (7.9 percent of contracted services)
  - Accounting and procurement systems and support
  - Human resources, payroll, and employee services
  - Equal employment opportunity and diversity programs
- Building Operations, Maintenance, and Security (6.7 percent of contracted services)
  - Headquarters facility operations and maintenance
  - Building security and continuity programs
  - Personnel security and administrative programs
- Information Technology Security (9.6 percent of contracted services)
  - Enhanced secure data storage and operations
  - Information security programs
  - Security system assessment services
- Training (5.3 percent of contracted services)
  - Examiner staff, technical and specialized training and development
  - Senior executive and mission support staff professional development
- Audit and Financial Management Support (3.2 percent of contracted services)
  - Annual audit support services
  - Material loss reviews
  - Investigation support services
  - Financial management support services

The following pie chart illustrates the breakout of the seven categories for the total 2023 contracted services budget of $65.6 million, of which $18.0 million is funded from prior year available balances.



Note: Minor rounding differences may occur in totals.

Major programs within the contracted services category include:

• Training requirements for the examiner workforce. The NCUA's most important resource is its highly educated, experienced, and skilled workforce. It is important that staff have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, examiners complete a wide range of training classes to ensure their skills and industry knowledge are kept up to date, including in core areas such as capital markets, consumer compliance, and specialized lending. Major training deliverables for 2023 include classes offered by the FFIEC, professional development training at the national training conference, and updated examiner training courses. As part of lessons learned from managing training requirements during the COVID–19 pandemic, the NCUA is controlling training costs with a blended schedule of both in-person and virtual sessions.

Contracted service providers, in partnership with the NCUA subject matter experts, will develop and design training classes for examiners and continue the ongoing review of the NCUA's examiner course curriculum. In addition, the NCUA will partner with the Office of Personnel Management to develop and certify principal examiner assessments that reflect current regulations and examination processes. The NCUA's Talent Management System will continue to be updated to include a Career Resource Center. Additionally, contracted service providers and central office staff will continue providing organizational development, leadership development programs, and teambuilding training.

• Information security program. This NCUA program supports ongoing efforts to strengthen the agency's cybersecurity and ensure its compliance with the Federal Information Security Modernization Act and other standards for federal agencies.

• Agency financial management services, human resources technology support, and payroll services. The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center (DOT/ESC) and the General Services Administration. The NCUA's human resource system, HR Links, also adopted by other federal agencies, is a shared solution that automates routine human resource tasks and improves time and attendance functionality.

• Audit. The NCUA Office of Inspector General contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and are included as part of the agency's Annual Report.

A significant share of the budget for contracted services finances ongoing information technology infrastructure support for the agency. The 2023 budget includes the third year of funding for operations and maintenance of the MERIT system, which replaced the legacy AIRES examination system in 2021. Several other of the NCUA's core information technology systems and processes also require additional contract support in 2023, which results in increase costs for contracted services, as described below.

Within the budget for the Office of Chief Information Officer (OCIO), an additional $2.7 million compared to the 2022 budget level is required for:

• Information technology infrastructure services and operations and maintenance labor support for the new MERIT system and NCUA legacy systems.

• Application tools that support the new MERIT system and other mission critical and business applications.

• Cybersecurity capabilities and implementing the provisions of Executive Order 14028, *Improving the Nation's Cybersecurity.*

Within the Office of the Executive Director, the contracted services budget increases by $500,000 compared to the 2022 budget level for support of the ongoing work on the Virtual Examination project.

Within the Office of Human Resources, contracted services increase by $802,000 compared to the 2022 budget level, primarily for the national

training conference, program support for human resource capital and workforce programs, including enhanced recruitment efforts, and other training support and management systems.

The Office of Minority and Women Inclusion's contract budget increases by $117,000 compared to the 2022 budget level. These funds will help OMWI achieve the goals established in the agency's *Diversity and Inclusion Strategic Plan* to promote diversity and inclusion within the agency and the credit union industry and ensure equal opportunity in accordance with the mandates of Section 342 of the Dodd-Frank Act. OMWI expects to host an in-person *Diversity, Equity, and Inclusion Summit* in 2023 to bring together credit union professionals to promote the value of diversity, equity, and inclusion for credit unions; share best diversity, equity, and inclusion practices; and develop solutions to industry-specific challenges in this arena.

Within the Office of Ethics Counsel, contracted services increase by $65,000 compared to the 2022 budget level. The increase will support the competitive solicitation and initial start-up costs for a financial disclosure reporting system. The NCUA is required to comply with this annual federal ethics reporting requirement.

Within the Office of Business Innovation, contracted services increase by $316,000 compared to the 2022 budget level. These funds will provide contract support for the agency's information system security processes and fund a third-party-administered survey about credit unions' examination experiences.

Within the Office of Continuity and Security Management, contracted services increase by $153,000 compared to the 2022 budget level. The increase is primarily associated with operations and maintenance of the physical access control system for the NCUA's facilities and the increased costs of secure communications systems compliance with new federal standards.

Within the Office of Consumer Financial Protection, contracted services increase by $289,000 compared to the 2022 budget level. The increase is primarily associated with a review and analysis of *MyCreditUnion.gov* to evaluate future plans for the consumer website and its financial literacy and outreach programs.

Within the Office of Examination and Insurance, contracted services increase by $467,000 compared to the 2022 budget level. These funds will be used primarily for Automated Cybersecurity Evaluation Toolbox enhancements, cybersecurity research and advisory services, and expert support to help automate internal manual processes.

Within the Office of the Chief Financial Officer, 2023 contracted services increase $646,000 compared to the 2022 budget level. The increases include annual accounting and procurement support provided by the Department of Transportation, Enterprise Service Center, project management support to assist with the agency transition to a new budget system, financial audit support services inflationary growth, competitive solicitation and award of a new travel reimbursement support contract, and a consolidated janitorial and maintenance contract for the headquarters and the Southern Region facilities.

Contracted services spending for 2024 is estimated at $67.1 million. Excluding the $18.0 million carryover in 2023, this is a net increase of $1.6 million, or approximately 2.4 percent. The net increase of $1.6 million supports $1.1 million for operations and maintenance costs for newly transitioned capital projects, $400,000 for a planned NCUA leadership conference, and $150,000 to support the new Ombudsman office.

V. Capital Budget

Overview

Annually, the NCUA carries out a rigorous review process to identify the agency's needs for information technology, facility improvements and repairs, and other multi-year capital investments. The NCUA staff review the agency's inventory of owned facilities, equipment, information technology systems, and information technology hardware to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the NCUA Board.

The NCUA's 2023 capital budget is $11.2 million. The capital budget funds the NCUA's long-term investments. The 2023 capital budget provides $10.8 million for information technology development projects and investments. The NCUA facilities require $472,000 for central office building minor construction and maintenance projects.

Information technology systems and hardware require significant capital expenditures for modern organizations. The 2023 budget continues the NCUA's multi-year investment in current and replacement information technology systems and hardware. The budget fully supports the NCUA's effort to modernize its information technology infrastructure and applications through the Information Technology Infrastructure, Platform and Security Refresh project and makes investments to improve the agency's management and analysis of data through the Data Reporting Solution project and the Enterprise Data Program. The budget also continues investment in the agency's new MERIT examination system. In addition, several other capital investment projects will help ensure the agency's cybersecurity posture complies with Executive Order 14028 and improve quality controls for application development projects.

Routine repairs and lifecycle-driven property renovations are also necessary to properly maintain investments in the NCUA-owned properties. The NCUA assesses the agency's properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency's organizational structure or address revisions to building standards and codes. In 2022, the NCUA reached the conclusion of several years of space consolidation and major renovation at its Alexandria headquarters. The 2023 budget funds maintenance requirements for the agency's headquarters.

2023–2024 NCUA CAPITAL BUDGET							
	2022 Board Approved Budget	2023 Requested Budget	Change (2022–2023)	Change Percent (2022–2023)	2024 Requested Budget	Change (2023–2024)	Change Percent (2023–2024)
Information technology investments	$ 11,569,000	$ 10,757,000	$ (812,000)	-7.0%	$ 10,757,000	$ -	0.0%
Capital building improvements and repairs	$ 1,500,000	$ 472,000	$ (1,028,000)	-68.5%	$ 477,000	$ 5,000	1.1%
Total	**$ 13,069,000**	**$ 11,229,000**	**$ (1,840,000)**	**-14.1%**	**$ 11,234,000**	**$ 5,000**	**0.0%**

Detailed descriptions of all 2023 capital projects, including a discussion of how each project helps the agency achieve its goals and objectives, are provided in Appendix B.

Summary of Capital Projects

Executive Order on Improving the Nation's Cybersecurity ($3.1 Million)

The purpose of this capital investment is to ensure the NCUA complies with Executive Order 14028, *Improving the Nation's Cybersecurity.* The project will enable the appropriate applications to use multi-factor authentication, implement a zero-trust architecture for the NCUA's infrastructure and applications, and shift compute and storage resources to a cloud service provider.

Continuous Diagnostics and Mitigation ($0.5 Million)

The objective of this project is to enhance the overall security posture of the NCUA with expanded capabilities to monitor vulnerabilities and threats in near real-time. This is achieved by implementing capabilities and technical controls to identify what is on the network, who is on the network, what is happening on the network, and to protect data in use, transit, and at rest. This increased situational awareness will allow the NCUA to prioritize actions to mitigate or accept cybersecurity risks based on the potential impact to the NCUA's mission.

Information Technology Infrastructure, Platform and Security Refresh ($3.1 Million)

The purpose of this project is to replace outdated or end-of-life network and platform hardware, as well as to prepare the NCUA for cloud computing adoption. This investment helps ensure business continuity and efficient operations by improving system availability and stability. Projects for 2023 include refreshing hardware and software and acquiring the professional services required to migrate and harden information technology systems for production readiness.

Examination and Supervision Solution and Infrastructure Hosting ($0.7 Million)

In 2021, the NCUA deployed the NCUA Connect and MERIT systems to NCUA staff, state supervisory authorities, and credit unions. In 2022, MERIT officially replaced AIRES for all NCUA examination and supervision contacts. After a year of use by staff, additional opportunities for enhancing MERIT's functionality and performance have been identified and the NCUA remains committed to delivering tools that maximize efficiency and generate the best results possible.

In 2023, the NCUA will make additional MERIT data available to staff to enhance field operations and enable future self-service reporting. Additionally, 2023 capital investments will be used to transition the legacy state supervisory authority Partner Gateway to NCUA Connect, eliminating service duplication and streamlining state supervisory authority access to NCUA systems while enhancing and expanding security controls to meet FedRamp standards.

Data Reporting Solution (DRS) ($0.8 Million)

DRS is focused on implementing a business intelligence (BI) solution for enhanced data access, integrity, analytics, and reporting. The Enterprise Data Program provides leadership on business and governance process needs for DRS. DRS' data-related investments iteratively build towards the objective of integrating our legacy enterprise data and new MERIT data into structures that can be leveraged by the business for self-service development of reporting and analytic work products. The NCUA's 2020 data maturity assessment confirmed the need for improved access and functionality in using data, with a strong desire for a common self-service business intelligence capability for efficient and effective use by staff. DRS will provide a modern self-service business intelligence tool for the enterprise, as well as access to data to enable staff to utilize the tool efficiently and effectively.

Enterprise Data Program ($0.4 Million)

The purpose of this project is the centralization, organization, and storage of the NCUA's data. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle. The program focus is to improve the agency's effectiveness by maturing data management practices to ensure the use of high-quality data in operations, reporting, and analytics. This is a highly collaborative effort to facilitate alignment across offices and performance of data-related work. Additionally, the Enterprise Data Program provides the overall business leadership and strategic direction for the DRS.

Consumer Access Process and Reporting Information System (CAPRIS) ($0.4 Million)

CAPRIS is the application that certain credit unions use to request changes to their field of membership. CAPRIS replaced the legacy GENISIS and FOMIA systems. The 2023 budget includes funds for improvements to the CAPRIS system that will allow the NCUA to process all occupational and associational common bond groups, regardless of potential membership size. Currently, credit unions that request changes to their field of membership exceeding 3,000 individuals must use paper-based forms, and NCUA staff reviews and processes these requests manually.

Mobile Device Refresh ($1.0 Million)

This project will replace the outdated or out of support mobile devices currently used by the NCUA's staff. The new mobile devices will be more secure and compatible with current technologies.

Enhanced Testing Capability ($0.3 Million)

The purpose of this investment is to improve the quality of the NCUA's applications and to meet the needs of a growing application portfolio. The NCUA's applications are developed and

maintained in accordance with the approved software development lifecycle and undergo a quality assurance review to ensure end products meet functional, performance, and security standards. This project will develop and execute additional test cases for complex and critical applications in order to strengthen quality assurance reviews.

Independent Verification and Validation (IV&V) Testing Team ($0.5 Million)

The purpose of this investment is to improve the quality of the NCUA's applications. A separately funded team of IV&V testers will provide an unbiased review of the requirements and software implemented on operations and maintenance contracts. The IV&V team will confirm that requirements are correctly defined and the system adequately implements required business functionality and security requirements by performing comprehensive reviews, analyses, and testing.

NCUA Website Development ($0.1 Million)

This project provides ongoing improvements to the website, such as an improved user experience, and supports the ongoing maintenance needs of the agency's public websites. In addition, the NCUA will develop a gated content solution for specific audiences to provide a level of privacy and security for accessing information, such as conference materials, by requiring a login and password similar to other remote and virtual conference systems.

Headquarters Building Minor Construction and Maintenance Projects ($0.5 Million)

The NCUA has developed a 10-year headquarters building improvement plan that identifies projects that can be completed incrementally. This approach recognizes ongoing building management and maintenance needs while reducing the potential budgetary impact of such projects in a single budget year. The NCUA has 26 projects planned in 2023.

Financial Management Process Automation

The 2023 budget would apply $400,000 previously approved by the NCUA Board to pay for efforts to implement technology-based solutions to automate manual financial and budgetary processes. This adds no additional cost to the budget. The $400,000 was originally approved by the Board to improve financial integration and automation by evaluating options for alternatives to the agency's current accounting platform and service. Since 2020, the accounting system service provider has improved its systems capabilities and is planning enhancements that could support automation and integration efforts at the NCUA, eliminating the need for an alternate provider. Planned process automation activities in 2023 include optimizing and prioritizing current processes to prepare for automation, building technical competencies within finance staff to use business intelligence tools, establishing a governance and configuration management structure for these activities, and reducing manual process activity.

VI. Share Insurance Fund Administrative Budget

Overview

The Share Insurance Fund Administrative Budget funds direct costs associated with authorized Share Insurance Fund activities.[19] Direct costs to the Share Insurance Fund include items such as data subscriptions and technology tools for ONES' analysis of large credit unions, travel for state examiners attending NCUA-sponsored training, and audit support for the Share Insurance Fund's financial statements. Beginning in 2022, the Share Insurance Fund Administrative Budget also started to include certain insurance-related expenses for AMAC operations.

The Share Insurance Fund Administrative Budget also pays for costs associated with the corporate resolution program and related NCUA Guaranteed Notes (NGN) program. On June 14, 2021, the last outstanding NGN Trust matured. Given the significantly reduced size of the legacy asset portfolio in the corporate asset management estates, the budget for the corporate resolution program continues to decrease in 2023 compared to the 2022 funding levels.

Budget Requirements and Description

The 2023 Share Insurance Fund Administrative budget is estimated to be $4.9 million, which is $1.3 million, or 21.5 percent, lower than 2022.

The 2023 budget decrease is primarily driven by the ongoing completion of corporate resolution program activities, an expected reduction in travel for state examiners attending NCUA-sponsored training, as well as the one-time corporate resolution study that was funded in 2022.

The 2024 requested budget supports similar workload and resources for the Share Insurance Fund, which are expected to remain the same as 2023 at $4.3 million, and includes no corporate resolution program related costs.

Share Insurance Fund Direct Expenses

Direct expenses to the Share Insurance Fund are estimated to be $4.3 million in 2023, a decrease of $0.5 million, or 9.8 percent, compared to the 2022 budget level.

Direct charges to the Share Insurance Fund include $2.0 million for operating and maintenance costs of the Asset and Liabilities Management system (ALM), which allows the NCUA to build internal analytical capabilities to conduct supervisory stress testing analyses and to perform other quantitative risk assessments of large credit unions.

In 2023, the Share Insurance Fund will continue to pay for certain insurance-related activities and expenses of AMAC. The Share Insurance Fund budget includes $0.2 million for these AMAC activities, such as consulting expenses necessary to prevent or attempt to prevent a liquidation or conservatorship and staff travel for consultation on complex or problem cases.

The 2023 budget also includes funds related to the supervisory responsibilities that the NCUA shares with state supervisory authorities. The Share Insurance Fund budget includes $1.0 million for state examiner travel to NCUA-sponsored training classes, and $0.2 million to ensure that state supervisory authorities can use the full functionality of the recently deployed MERIT examination system. The 2022 budget included similar amounts for these activities.

Finally, the Share Insurance Fund budget includes $0.8 million for financial reporting, including the annual financial audit and for contractor support to ensure effective internal controls for the fund.

Corporate Resolution Program

In 2017, the Board voted to close the Temporary Corporate Credit Union Stabilization Fund. Since 2018, the Share Insurance Fund has funded the related costs to include employee pay, benefits, travel, and contract support required to support the program.

The program budget decreased by 58.2 percent from 2021 to 2022. As the

[19] Direct costs do not include any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of this title, and for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

remaining legacy assets are sold and the program comes to a close, the associated budget continues to decrease and falls by 59.2 percent from 2022 to 2023. The only remaining expenses for the program in 2023 are $0.4 million for legacy asset waterfall models and $0.2 million for valuation analysis support and data.

With expected wind-down of the program in 2023, there is no corporate resolution budget planned for 2024.

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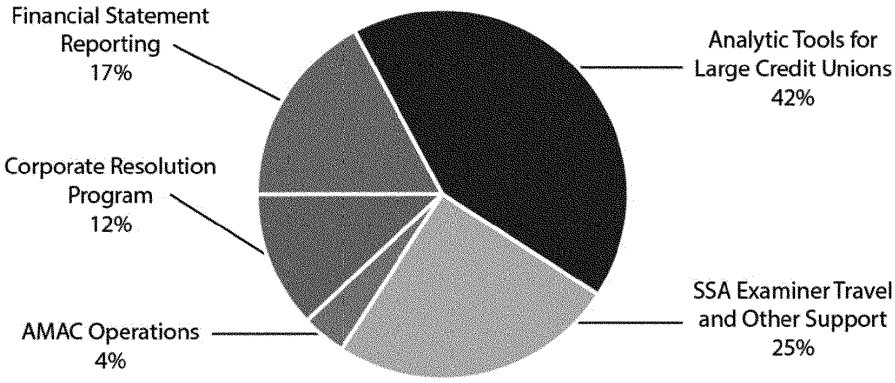
2023 Share Insurance Fund Administrative Budget



2023–2024 SHARE INSURANCE FUND ADMINISTRATIVE BUDGET

	2022 Board Approved Budget	2023 Requested Budget	Change (2022–23)	Change Percent (2022–23)	2024 Requested Budget	2023 Pos	2024 Pos
SIF Direct Expenses							
Travel							
OHR: State Examiner Training	1,185,000	994,000	(191,000)	-16.1%	994,000		
AMAC: Staff travel for problem cases	15,000	15,000	-	-	15,000		
Subtotal, Travel (SIF Direct Expenses)	**1,200,000**	**1,009,000**	**(191,000)**	**-15.9%**	**1,009,000**		
Administrative Expenses							
ONES: Analytic Tools for Large Credit Unions	30,000	30,000	-	-	30,000		
AMAC: Shipping and Miscellaneous Admin	20,000	48,000	28,000	140.0%	48,000		
Subtotal Administrative Expenses (SIF Direct Expenses)	**50,000**	**78,000**	**28,000**	**56.0%**	**78,000**		
Contracted Services							
ONES: Analytic Tools for Large Credit Unions	2,000,000	2,025,000	25,000	1.3%	2,025,000		
OCFO: Financial Accounting, Audit Support, Bank Charges	915,000	847,000	(68,000)	-7.4%	847,000		
OBI: SSA costs for MERIT	200,000	216,000	16,000	8.0%	216,000		
AMAC: Corp. Resolution Study (2022), legal, other contracts	405,000	129,000	(276,000)	-68.1%	129,000		
Subtotal, Contracted Services (SIF Direct Expenses)	**3,520,000**	**3,217,000**	**(303,000)**	**-8.6%**	**3,217,000**		
Total, SIF Direct Expenses	**4,770,000**	**4,304,000**	**(466,000)**	**-9.8%**	**4,304,000**		
Corporate Resolution Program							
Personnel Compensation	500,000	-	(500,000)	-100.0%	-	-	-
Travel	26,000	-	(26,000)	-100.0%	-		
Administrative Expenses							
E&I: Software and Data Subscriptions	360,000	402,000	42,000	11.7%	-		
Contracted Services							
E&I: Valuation Services, Contract Support, Training	590,000	200,000	(390,000)	-66.1%	-		
Total, Corporate Resolution Program	**1,476,000**	**602,000**	**(874,000)**	**-59.2%**	-		
Total SIF BUDGET	**$ 6,246,000**	**$ 4,906,000**	**$ (1,340,000)**	**-21.5%**	**$ 4,304,000**	-	-

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VII. Financing the NCUA's Programs

Overview

The NCUA incurs various expenses to achieve its statutory mission, including those involved in examining and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, a Capital Budget, and a Share Insurance Fund Administrative

Budget each year to fund the vast majority of the costs of operating the agency.[20] When formulating the annual budget, the NCUA is mindful that its funding comes from credit unions. The agency strives to ensure the agency operates in an efficient, effective, transparent, and fully accountable manner.

The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

1. Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper''; [21] and

2. ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].'' [22] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].''

Taken together, these authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating expenses.

In 1972, the Government Accountability Office recommended the NCUA adopt a method for allocating Operating Budget costs—that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[23] The NCUA has since used an allocation methodology known as the Overhead Transfer Rate to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

The NCUA uses the Overhead Transfer Rate methodology to allocate agency expenses between these two primary funding sources. Specifically, the Overhead Transfer Rate is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II of the Act. Almost all other operating expenses are funded through collecting annual Operating Fees paid by federal credit unions.[24]

Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the Overhead Transfer Rate. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[25] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[26] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the Overhead Transfer Rate.

The NCUA conducts a comprehensive workload analysis annually. This analysis estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the year. These estimates are informed by the overall parameters of the NCUA's examination program, as most recently updated by the Exam Flexibility Initiative approved by the Board.[27] The workload estimates are then refined by regional managers and submitted to the NCUA headquarters for the annual budget proposal. The Overhead Transfer Rate methodology accounts for the costs of the NCUA, not the costs of state regulators. Therefore, there are no calculations made for state examiner hours.

Overhead Transfer Rate

There have not been any major changes to the parameters of the examination program since the current Overhead Transfer Rate methodology went into effect.[28] The minor variations in the Overhead Transfer Rate since 2018 are the result of routine, small fluctuations in the variables that affect the Overhead Transfer Rate, including normal fluctuations in the workload budget from one calendar year to the next.

The NCUA Board approved the current methodology for calculating the Overhead Transfer Rate at its November 2017 open meeting.[29] In 2020, the Board published in the **Federal Register** a request for comment regarding the Overhead Transfer Rate methodology but did not propose or adopt any changes to the current methodology.[30] The Overhead Transfer Rate is designed to cover the NCUA's costs of examining and supervising the risk to the Share Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The Overhead Transfer Rate represents the percentage of the agency's operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for and do not have to remit the Overhead Transfer Rate amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

The Overhead Transfer Rate formula uses the following underlying principles to allocate agency operating costs:

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related.[31]

2. All time and costs the NCUA spends supervising or evaluating the risks posed by federally insured, state-

[20] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[21] 12 U.S.C. 1783(a).

[22] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

[23] *https://www.gao.gov/products/b-1640314-31.*

[24] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [federal credit unions] to pay the fee.'' 12 U.S.C. 1755(b).

[25] 12 U.S.C. 1783(a).

[26] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' *See also* 12 U.S.C. 1766(j)(3).

[27] The Exam Flexibility Initiative started with the January 1, 2017, examination cycle, and it allows for extended examination cycles for eligible credit unions. Letters to Credit Unions 16–CU–12, December 2016.

[28] On November 16, 2017, the NCUA Board adopted a new methodology for calculating the Overhead Transfer Rate starting with the 2018 Overhead Transfer Rate. 82 FR 55644, November 22, 2017.

[29] 82 FR 55644 (Nov. 22, 2017).

[30] *https://www.federalregister.gov/documents/2020/08/31/2020-17009/request-for-comment-regarding-national-credit-union-administration-overhead-transfer-rate.*

[31] The 50 percent allocation mathematically emulates an examination and supervision program design where the NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within the NCUA. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations the FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that the NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

chartered credit unions or other entities that the NCUA does not charter or regulate (for example, third-party vendors and Credit Union Service Organizations (CUSOs)) are allocated as 100 percent insurance related.[32]

3. Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance-based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.[33]

4. Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.[34]

These four principles are applied to the activities and costs of the agency to determine the portion of the agency's budget that is funded by the Share Insurance Fund. Based on the Board-approved methodology and the proposed budget, the Overhead Transfer Rate for 2023 is 30 basis points (0.3 percent) lower than for 2022, and estimated to be 62.4 percent. Thus, 62.4 percent of the total Operating Budget is estimated to be paid out of the Share Insurance Fund. The remaining 37.6 percent of the Operating Budget is estimated to be paid for by Operating Fees collected from federal credit unions. The explicit and implicit distribution of total Operating Budget costs for federal credit unions and federally insured, state-chartered credit unions is outlined in the table below:

2023 Estimated Distribution: Overhead Transfer Rate and Operating Fee

Est. Share of the Operating Budget covered by:	Federal Credit Unions	Federally Insured, State-Chartered Credit Unions
Federal Credit Union Operating Fee	37.6%	0.0%
Overhead Transfer Rate x Percent of Insured Shares	31.2% (62.4% x 49.9%)	31.2% (62.4% x 50.1%)
Total	**68.8%**	**31.2%**

To determine the funds transferred from the Share Insurance Fund to the Operating Fund, the Overhead Transfer Rate is applied to actual expenses incurred each month. Therefore, the rate calculated by the Overhead Transfer Rate formula is multiplied by each month's actual operating expenditures and the product of that calculation is transferred from the Share Insurance Fund to the Operating Fund. This monthly reconciliation to actual operating expenditures captures the variance between actual and budgeted amounts, so when the NCUA's expenditures are less than budgeted, the amount charged to the Share Insurance Fund is also less—and those lower expenditures benefit both federally chartered and federally insured, state-chartered credit unions.

The use of insured shares in calculating the Overhead Transfer Rate was eliminated from the Overhead Transfer Rate methodology adopted by the Board in 2017. However, insured shares are used for informational purposes to reflect the fundamental economics with respect to how the implicit costs of the Overhead Transfer Rate are borne by federal and state-chartered credit unions. Use of insured shares is consistent with the mutual nature of the Share Insurance Fund and part of the statutory scheme related to Share Insurance Fund deposits, premiums, and dividends.[35] The number, size, and health of federal and state credit unions affects the NCUA's workload budget, which in turn is one of the variables in the Overhead Transfer Rate methodology.

The primary drivers of the change in the estimated 2023 Overhead Transfer Rate result from changes in the draft examiner workload budget and the proposed funding levels in the draft operating and capital budgets. First, there is a modest decrease in insurance-related time reflected in the draft examiner workload budget for 2023, as resources allocated to overseeing the examination and supervision of federal credit unions increased twice as much as the resources allocated toward overseeing state-chartered credit unions. Second, there is a modest decrease in the 2023 budget for the Asset Management and Assistance Center. The estimated Overhead Transfer Rate cost distribution between federal credit unions and federally insured, state-chartered credit unions is projected to be relatively equal and results in an approximate 15-basis point drop for both from 2022 to 2023. The distribution of insured shares between federal credit unions and federally insured, state-chartered credit unions remains virtually unchanged year-over-year.

CUSOs are at times subject to review during the examination of a federally insured credit union. The Overhead Transfer Rate methodology captures CUSO-related time within the scope of the examination and supervision of federally insured credit unions under Principle 1 for federal credit unions and Principle 2 for federally insured state-chartered credit unions. The time designated for separate, standalone reviews of CUSOs and third-party vendors is accounted for separately in the NCUA's workload budget and is covered by Principle 2 only. The standalone review of CUSOs and third-party vendors is to identify and address risk to federally insured credit unions.

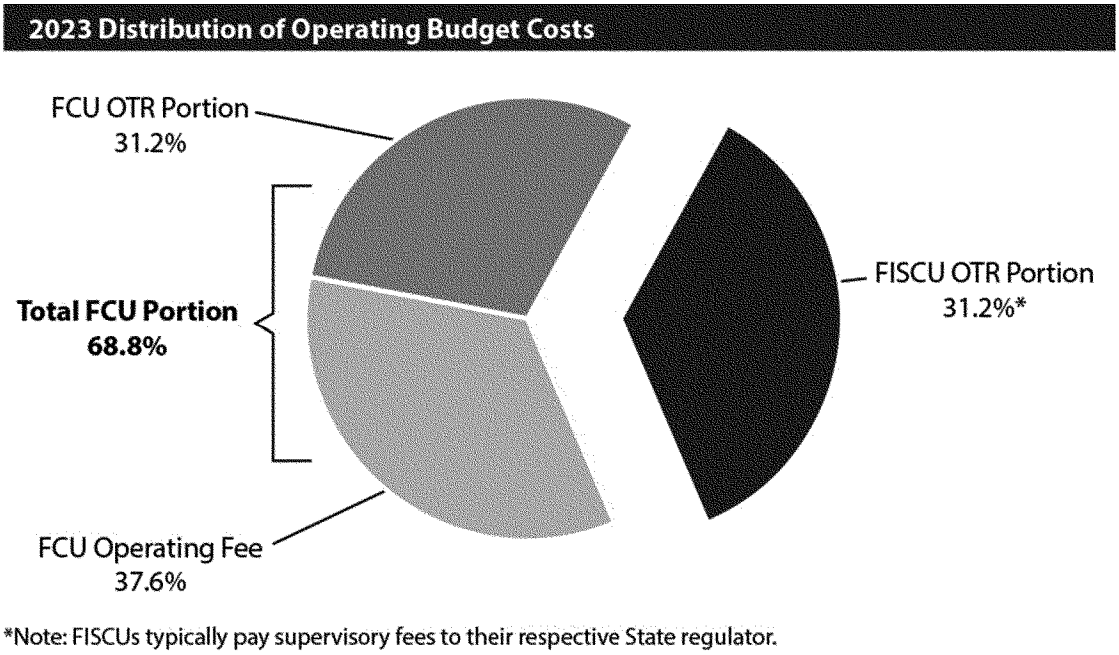
The following chart illustrates the share of the Operating Budget paid by federal credit unions (68.8%) and federally insured, state-chartered credit unions (31.2%).

[32] The NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. The NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related.

[33] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions operate in the marketplace, the NCUA resources allocated to these functions are properly assigned to its role as charterer/prudential regulator.

[34] The NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of the NCUA's role as insurer.

[35] 12 U.S.C. 1782(c)(2) and (3).



Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fee and to set the fee schedule as calculated per the approved methodology. In 2020, the Board approved and published in the **Federal Register** the current Operating Fee methodology, which forms the basis for how the Operating Fee is calculated in this section.[36] Consistent with its triennial schedule for regulatory reviews, the NCUA expects to request public comment about the Operating Fee methodology in 2023. Among the issues of interest to the NCUA Board about the Operating Fee methodology, the agency plans to ask for public views about how it should determine the asset threshold below which smaller credit unions are exempt from paying the operating fee, how it should determine an equitable distribution schedule of operating fee rates based on credit union size, and whether other factors should be considered when calculating the fees collected from credit unions.

To determine the annual Operating Fee assessed on natural person federal credit unions using the current methodology, the NCUA first calculates the average of total assets reported in the preceding four calendar quarters available at the time of the calculation, net of any reported Paycheck Protection Program (PPP) loans. Credit unions with assets less than $1 million are not assessed an Operating Fee and their assets are therefore excluded from this calculation.

Based on the Board-approved Operating Fee methodology, which is summarized in the following tables, the share of the 2023 budget funded by the Operating Fee is $134.7 million. This equates to 0.0129 percent of the actual average of natural person federal credit union assets for the four calendar quarters ending on June 30, 2022. The calculated Operating Fee rate for 2023 increases 15.4 percent compared to the rate in 2022, as shown on the table on the following page. It is important to note, however, that the Operating Fee rate for 2022 was 23.7 percent lower than the 2021 rates. Therefore, although the 2023 average Operating Fee rate is projected to increase to 0.0129 percent of natural person federal credit union assets in 2023, it is still 11.6 percent lower than the average 0.0146 percent rate charged in 2021.

As part of the Board-approved Operating Fee methodology, the NCUA can adjust the share of the budget funded by the Operating Fee based on an analysis of the agency's future cash flow requirements compared to past years' collections that were not spent as planned. Any projected surplus cash from past years' fee collections not required to finance agency operations can accordingly be used to lower the Operating Fee share of the proposed budget. Because such cash surpluses result from past years' Operating Fee collections, they do not offset the portion of the budget funded by the Overhead Transfer Rate. As the final 2023–2024 budget is prepared for consideration by the NCUA Board, the Chief Financial Officer will evaluate the agency's cash position and make a recommendation about any surplus cash that can be credited to the operating fee.

To set the assessment scale for 2023, total growth in natural person federal credit union assets is calculated as the change between the average of the four most-current quarters (*i.e.,* the third and fourth quarters of 2021 and the first two quarters of 2022) and the previous four quarters (*i.e.,* the third and fourth quarter of 2020 and the first two quarters of 2021), which is estimated to be 11.6 percent. Asset level dividing points are likewise increased by this same growth rate in order to preserve the same relative relationship of the scale to the applicable asset base.

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[36] *https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

PROJECTED FISCAL YEAR 2023 OPERATING FEE REQUIREMENTS

($ in millions)

				2023 Draft Budget
1	Proposed Operating Budget		$	350.817
2	Add Capital Investments		$	11.229
3	Miscellaneous Revenue		$	(0.422)
4	**Operating Budget to apply OTR**		**$**	**361.624**
5	Overhead Transfer Rate	**62.4%**	$	(225.653)
6	Interest Income		$	(0.948)
7	**Net** (sum lines 4 - 6)		**$**	**135.023**
8	Operating Fund adjustment		$	-
9	**Budgeted Operating Fee/Capital Requirements** (sum lines 7 - 8)		**$**	**135.023**
10	Corporate Federal CU Operating Fees		$	(0.325)
11	**Natural Person FCU Operating Fees Required** (sum lines 9 -10)		**$**	**134.698**
12	Fees projected with Asset Growth of	**11.6%**	$	(116.750)
13	**Difference** (lines 11 & 12)		**$**	**17.948**
14	**Average Rate Adjustment Indicated** (line 13 divided by line 12)			**15.37%**

Operating Fee Scale

To illustrate the rate for each asset tier for which Operating Fees are charged, the tables below show the effect of the average 15.4 percent increase in the Operating Fee for natural person federal credit unions. The corporate federal credit union rate scale remains unchanged from prior years.

PROPOSED 2023 OPERATING FEE SCALE

2022 Natural Person Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$2,083,833,636	$0.00	+	0.00016714	X total assets over	$0.00
$2,083,833,636	TO	$6,305,649,275	$348,292	+	0.00004871	X total assets over	$2,083,833,636
$6,305,649,275	AND	Over	$553,937	+	0.00001627	X total assets over	$6,305,649,275

2023 (Proposed) Natural Person Federal Credit Union Scale

Projected FCU asset growth rate	11.55%	Change in asset level dividing points
Operating fee rate change	15.37%	Change in assessment rate percentages

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$2,324,516,421	$0.00	+	0.00019283	X total assets over	$0.00
$2,324,516,421	TO	$7,033,951,766	$448,237	+	0.00005620	X total assets over	$2,324,516,421
$7,033,951,766	AND	Over	$712,907	+	0.00001877	X total assets over	$7,033,951,766

2023 (Proposed) Corporate Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$50,000,000	TO	$100,000,000	$10,648	+	0.00019870	X total assets over	$50,000,000
$100,000,000	AND	Over	$20,583	+	0.00001230	X total assets over	$100,000,000

VII. Appendix A: Supplemental Budget Information

Budget by Strategic Goal

The table below shows the combined total of the 2023 Staff Draft Operating and Capital Budgets, organized by the NCUA's three current strategic goals.

Strategic Goal	2023 Staff Draft Budget	
	Dollars (in Millions)	Positions
Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers	$238.63	1,010
Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services	$14.97	59
Goal 3: Maximize organizational performance to enable mission success	$104.37	142
Office of Inspector General	$4.07	10
Total	**$362.05**	**1,221**

Budgets for the Offices of the Board, Executive Director, General Counsel, Ethics Council, External Affairs and Communications, Chief Financial Officer, and the Capital Budget are allocated across all strategic goals.

Note: Position totals do not include five positions funded by the Central Liquidity Fund in 2023.

Minor rounding differences may occur in totals.

Office Budget Summary

2023–2024 NCUA OPERATING BUDGET										
Office	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change		2024 Requested Budget	2023–2024 Change		Authorized Positions		
								2022	2023	2024
Eastern Region	58,572,669	57,377,671	(1,194,998)	-2.0%	62,011,780	4,634,109	8.1%	281	266	273
Southern Region	48,019,810	49,532,466	1,512,656	3.2%	53,748,422	4,215,956	8.5%	228	228	233
Western Region	50,829,563	55,251,750	4,422,187	8.7%	59,502,808	4,251,059	7.7%	243	246	251
Office of National Examinations and Supervision	13,927,875	14,746,041	818,166	5.9%	16,185,638	1,439,597	9.8%	50	51	55
Supervision and Examination	**171,349,917**	**176,907,928**	**5,558,011**	**3.2%**	**191,448,549**	**14,540,620**	**8.2%**	**802**	**791**	**812**
Office of the Board	3,710,833	3,798,901	88,068	2.4%	3,889,259	90,358	2.4%	13	13	13
Office of the Executive Director	3,297,646	3,597,524	299,878	9.1%	3,684,183	86,659	2.4%	10	8	8
Federal Financial Institutions Examination Council	1,510,000	1,520,000	10,000	0.7%	1,520,000	-	0.0%	-	-	-
Office of the Ombudsman	-	459,718	459,718	-	1,065,743	606,025	131.8%		3	4
Office of Ethics Counsel	1,673,855	2,122,397	448,542	26.8%	2,199,790	77,393	3.6%	6	7	7
Office of Business Innovation	3,375,530	3,657,128	281,598	8.3%	3,767,949	110,821	3.0%	12	12	12
Office of Continuity and Security Management	5,187,310	5,443,326	256,016	4.9%	5,551,328	108,002	2.0%	12	12	12
Office of Minority and Women Inclusion	3,841,792	4,037,535	195,743	5.1%	4,243,295	205,760	5.1%	10	11	11
Office of the Chief Economist	2,539,681	2,586,511	46,830	1.8%	2,668,062	81,550	3.2%	8	8	8
Office of Consumer Financial Protection	6,606,161	7,312,512	706,351	10.7%	7,761,351	448,839	6.1%	28	30	30
Office of the Chief Financial Officer	21,283,704	23,230,362	1,946,658	9.1%	23,755,516	525,154	2.3%	53	54	54
Cross-cutting agency expenses	(20,055,417)	(14,594,643)	5,460,774	-27.2%	3,405,357	18,000,000	-123.3%	-	-	-
Office of the Chief Information Officer	53,146,616	56,084,497	2,937,881	5.5%	57,595,411	1,510,915	2.7%	45	45	45
Credit Union Resources and Expansion	9,167,403	9,365,944	198,541	2.2%	9,675,179	309,235	3.3%	36	38	38
Office of Examination & Insurance	14,799,048	16,102,879	1,303,831	8.8%	17,039,570	936,691	5.8%	48	52	52
Office of General Counsel	13,224,940	13,780,880	555,940	4.2%	14,243,181	462,301	3.4%	45	46	46
Office of Inspector General	4,048,411	4,072,830	24,419	0.6%	4,172,459	99,629	2.4%	10	10	10
Office of Human Resources	16,229,969	20,524,090	4,294,121	26.5%	19,410,279	(1,113,811)	-5.4%	44	45	45
Office of External Affairs and Communication	5,200,601	5,464,076	263,475	5.1%	5,583,394	119,318	2.2%	14	14	14
Asset Management and Assistance Center	-	5,342,884	5,342,884	-	5,519,564	176,680	3.3%	-	22	22
Mission Support	**148,788,083**	**173,909,350**	**25,121,267**	**16.9%**	**196,750,869**	**22,841,519**	**13.1%**	**394**	**430**	**431**
Total Operating Budget	**$320,138,000**	**$350,817,278**	**$30,679,278**	**9.6%**	**$388,199,518**	**$37,382,240**	**10.7%**	**1,196**	**1,221**	**1,243**

Office Budgets

OFFICE OF THE BOARD: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**13.0**	**13.0**	**-**	**-**	**13.0**	**-**	**-**
Employee Compensation	3,206,083	3,296,151	90,068	2.8%	3,386,509	90,358	2.7%
Salaries	2,272,044	2,329,860	57,817	2.5%	2,399,295	69,434	3.0%
Benefits	934,039	966,290	32,251	3.5%	987,214	20,924	2.2%
Travel	167,000	169,000	2,000	1.2%	169,000	-	0.0%
Rent /Comm/Util	17,750	17,750	-	0.0%	17,750	-	0.0%
Administrative	39,000	39,000	-	0.0%	39,000	-	0.0%
Contracted Services	281,000	277,000	(4,000)	-1.4%	277,000	-	0.0%
Total	**$ 3,710,833**	**$ 3,798,901**	**$ 88,068**	**2.4%**	**$ 3,889,259**	**$ 90,358**	**2.4%**

OFFICE OF THE EXECUTIVE DIRECTOR: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions*	**10.0**	**8.0**	**(2.0)**	**-20.0%**	**8.0**	**-**	**-**
Employee Compensation	2,739,896	2,551,774	(188,122)	-6.9%	2,638,433	86,659	3.4%
Salaries	1,933,326	1,802,135	(131,191)	-6.8%	1,868,903	66,768	3.7%
Benefits	806,571	749,640	(56,931)	-7.1%	769,531	19,891	2.7%
Travel	30,000	30,000	-	0.0%	30,000	-	0.0%
Rent /Comm/Util	22,000	20,000	(2,000)	-9.1%	20,000	-	0.0%
Administrative	1,535,250	1,535,250	-	0.0%	1,535,250	-	0.0%
ED Core	25,250	15,250	(10,000)	-39.6%	15,250	-	0.0%
FFIEC	1,510,000	1,520,000	10,000	0.7%	1,520,000	-	0.0%
Contracted Services	480,500	980,500	500,000	104.1%	980,500	-	0.0%
Total	**$ 4,807,646**	**$ 5,117,524**	**$ 309,878**	**6.4%**	**$ 5,204,183**	**$ 86,659**	**1.7%**

*2022 OED Position levels include 2 unallocated Positions

OFFICE OF THE OMBUDSMAN: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**-**	**3.0**	**3.0**	**-**	**4.0**	**-**	**-**
Employee Compensation		444,718	444,718	-	900,743	456,025	102.5%
Salaries		323,938	323,938	-	662,460	338,523	104.5%
Benefits		120,780	120,780	-	238,282	117,502	97.3%
Travel		5,000	5,000	-	5,000	-	0.0%
Rent /Comm/Util		2,000	2,000	-	2,000	-	0.0%
Administrative		1,000	1,000	-	1,000	-	0.0%
Contracted Services		7,000	7,000	-	157,000	150,000	2,142.9%
Total	**$ -**	**$ 459,718**	**$ 459,718**	**-**	**$ 1,065,743**	**$ 606,025**	**131.8%**

Note: Minor rounding differences may occur in totals.

OFFICE OF ETHICS COUNSEL: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**6.0**	**7.0**	**1.0**	**16.7%**	**7.0**	**-**	**-**
Employee Compensation	1,586,755	1,969,608	382,853	24.1%	2,047,001	77,393	3.9%
Salaries	1,148,773	1,414,524	265,751	23.1%	1,474,371	59,847	4.2%
Benefits	437,982	555,084	117,102	26.7%	572,630	17,546	3.2%
Travel	15,000	15,000	-	0.0%	15,000	-	0.0%
Rent /Comm/Util	3,600	4,200	600	16.7%	4,200	-	0.0%
Administrative	3,000	3,000	-	0.0%	3,000	-	0.0%
Contracted Services	65,500	130,589	65,089	0.0%	130,589	-	0.0%
Total	**$ 1,673,855**	**$ 2,122,397**	**$ 448,542**	**26.8%**	**$ 2,199,790**	**$ 77,393**	**3.6%**

OFFICE OF BUSINESS INNOVATION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	3,232,430	3,198,282	(34,148)	-1.1%	3,309,103	110,821	3.5%
Salaries	2,301,022	2,269,788	(31,235)	-1.4%	2,355,233	85,446	3.8%
Benefits	931,408	928,494	(2,914)	-0.3%	953,870	25,375	2.7%
Travel	96,800	95,700	(1,100)	-1.1%	95,700	-	0.0%
Rent /Comm/Util	7,800	8,100	300	3.8%	8,100	-	0.0%
Administrative	5,500	6,300	800	14.5%	6,300	-	0.0%
Contracted Services	33,000	348,746	315,746	956.8%	348,746	-	0.0%
Total	**$ 3,375,530**	**$ 3,657,128**	**$ 281,598**	**8.3%**	**$ 3,767,949**	**$ 110,821**	**3.0%**

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	3,032,683	3,113,687	81,004	2.7%	3,221,689	108,002	3.5%
Salaries	2,150,670	2,208,430	57,760	2.7%	2,291,566	83,136	3.8%
Benefits	882,013	905,257	23,244	2.6%	930,124	24,867	2.7%
Travel	20,000	20,000	-	0.0%	20,000	-	0.0%
Rent /Comm/Util	35,000	57,200	22,200	0.0%	57,200	-	0.0%
Administrative	36,000	36,000	-	0.0%	36,000	-	0.0%
Contracted Services	2,063,627	2,216,439	152,812	7.4%	2,216,439	-	0.0%
Total	**$ 5,187,310**	**$ 5,443,326**	**$ 256,016**	**4.9%**	**$ 5,551,328**	**$ 108,002**	**2.0%**

Note: Minor rounding differences may occur in totals.

OFFICE OF MINORITY AND WOMEN INCLUSION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**10.0**	**11.0**	**1.0**	**10.0%**	**11.0**	**-**	**-**
Employee Compensation	2,663,102	2,769,001	105,899	4.0%	2,974,760.7	205,760	7.4%
Salaries	1,895,178	1,963,416	68,239	3.6%	2,117,765	154,348	7.9%
Benefits	767,924	805,585	37,661	4.9%	856,996	51,411	6.4%
Travel	75,001	76,100	1,099	1.5%	76,100	-	0.0%
Rent /Comm/Util	13,941	14,650	709	5.1%	14,650	-	0.0%
Administrative	211,759	182,315	(29,444)	-13.9%	182,315	-	0.0%
Contracted Services	877,989	995,469	117,480	13.4%	995,469	-	0.0%
Total	**$ 3,841,792**	**$ 4,037,535**	**$ 195,743**	**5.1%**	**$ 4,243,295**	**$ 205,760**	**5.1%**

OFFICE OF THE CHIEF ECONOMIST: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**8.0**	**8.0**	**-**	**-**	**8.0**	**-**	**-**
Employee Compensation	2,307,745	2,347,767	40,022	1.7%	2,429,318	81,550	3.5%
Salaries	1,651,843	1,679,964	28,121	1.7%	1,743,206	63,242	3.8%
Benefits	655,902	667,803	11,901	1.8%	686,112	18,309	2.7%
Travel	20,000	20,000	-	0.0%	20,000	-	0.0%
Rent /Comm/Util	4,200	4,200	-	0.0%	4,200	-	0.0%
Administrative	203,422	210,230	6,808	3.3%	210,230	-	0.0%
Contracted Services	4,314	4,314	-	0.0%	4,314	-	0.0%
Total	**$ 2,539,681**	**$ 2,586,511**	**$ 46,830**	**1.8%**	**$ 2,668,062**	**$ 81,550**	**3.2%**

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**28.0**	**30.0**	**2.0**	**7.1%**	**30.0**	**-**	**-**
Employee Compensation	6,121,934	6,644,152	522,218	8.5%	7,092,991	448,839	6.8%
Salaries	4,313,417	4,664,683	351,266	8.1%	5,000,283	335,600	7.2%
Benefits	1,808,517	1,979,469	170,952	9.5%	2,092,708	113,239	5.7%
Travel	343,547	241,437	(102,110)	-29.7%	241,437	-	0.0%
Rent /Comm/Util	42,150	42,543	393	0.9%	42,543	-	0.0%
Administrative	27,430	23,880	(3,550)	-12.9%	23,880	-	0.0%
Contracted Services	71,100	360,500	289,400	407.0%	360,500	-	0.0%
Total	**$ 6,606,161**	**$ 7,312,512**	**$ 706,351**	**10.7%**	**$ 7,761,351**	**$ 448,839**	**6.1%**

Note: Minor rounding differences may occur in totals.

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**53.0**	**54.0**	**1.0**	**1.9%**	**54.0**	**-**	**-**
Employee Compensation	13,783,003	14,509,278	726,274	5.3%	15,034,432	525,155	3.6%
Salaries	9,694,453	10,390,006	695,553	7.2%	10,788,655	398,649	3.8%
OCFO	8,455,870	8,750,156	294,286	3.5%	9,148,805	398,649	4.6%
Crosscutting	1,238,583	1,639,850	401,267	32.4%	1,639,850	-	0.0%
Benefits	4,088,550	4,119,272	30,721	0.8%	4,245,777	126,505	3.1%
OCFO	3,582,550	3,703,765	121,214	3.4%	3,830,270	126,505	3.4%
Crosscutting	506,000	415,507	(90,493)	-17.9%	415,507	-	0.0%
Travel	180,000	100,000	(80,000)	-44.4%	100,000	-	0.0%
OCFO	40,000	100,000	60,000	150.0%	100,000	-	0.0%
Rent /Comm/Util	684,705	1,458,000	773,295	112.9%	1,458,000	-	0.0%
OCFO	674,705	1,458,000	783,295	116.1%	1,458,000	-	0.0%
Administrative	1,747,900	2,030,000	282,100	16.1%	2,030,000	-	0.0%
OCFO	637,900	680,000	42,100	6.6%	680,000	-	0.0%
Crosscutting	1,110,000	1,350,000	240,000	21.6%	1,350,000	-	0.0%
Contracted Services	(15,167,321)	(9,461,559)	5,705,762	-37.6%	8,538,441	18,000,000	-190.2%
OCFO	7,892,679	8,538,441	645,762	8.2%	8,538,441	-	0.0%
Crosscutting	(23,060,000)	(18,000,000)	5,060,000	-21.9%		18,000,000	-100.0%
Total	**$ 1,228,287**	**$ 8,635,719**	**$ 7,407,431**	**603.1%**	**$ 27,160,873**	**$ 18,525,155**	**214.5%**
OCFO Total	21,283,704	23,230,362	1,946,657	9.1%	23,755,516	525,155	2.3%
Crosscutting	(20,055,417)	(14,594,643)	5,460,774	-27.2%	3,405,357	18,000,000	-123.3%

OFFICE OF THE CHIEF INFORMATION OFFICER: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**45.0**	**45.0**	**-**	**-**	**45.0**	**-**	**-**
Employee Compensation	11,587,343	11,882,390	295,046	2.5%	12,293,304	410,915	3.5%
Salaries	8,236,674	8,427,312	190,638	2.3%	8,744,556	317,244	3.8%
Benefits	3,350,670	3,455,078	104,408	3.1%	3,548,748	93,670	2.7%
Travel	60,000	110,000	50,000	83.3%	110,000	-	0.0%
Rent /Comm/Util	2,906,500	2,753,863	(152,637)	-5.3%	2,753,863	-	0.0%
Administrative	30,000	30,000	-	0.0%	30,000	-	0.0%
Contracted Services	38,562,773	41,308,244	2,745,471	7.1%	42,408,244	1,100,000	2.7%
Total	**$ 53,146,616**	**$ 56,084,497**	**$ 2,937,881**	**5.5%**	**$ 57,595,411**	**$ 1,510,915**	**2.7%**

Note: Minor rounding differences may occur in totals.

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**50.0**	**51.0**	**1.0**	**2.0%**	**55.0**	**4.0**	**7.8%**
Employee Compensation	12,652,680	13,215,682	563,002	4.4%	14,655,279	1,439,597	10.9%
Salaries	8,898,368	9,314,393	416,025	4.7%	10,388,152	1,073,759	11.5%
Benefits	3,754,313	3,901,289	146,976	3.9%	4,267,127	365,838	9.4%
Travel	927,000	1,125,000	198,000	21.4%	1,125,000	-	0.0%
Rent /Comm/Util	24,500	34,400	9,900	40.4%	34,400	-	0.0%
Administrative	41,595	61,950	20,355	48.9%	61,950	-	0.0%
Contracted Services	282,100	309,009	26,909	9.5%	309,009	-	0.0%
Total	**$ 13,927,875**	**$ 14,746,041**	**$ 818,166**	**5.9%**	**$ 16,185,638**	**$ 1,439,597**	**9.8%**

OFFICE OF CREDIT UNION RESOURCE AND EXPANSION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**36.0**	**38.0**	**2.0**	**5.6%**	**38.0**	**-**	**-**
Employee Compensation	8,096,403	8,490,944	394,541	4.9%	8,800,179	309,235	3.6%
Salaries	5,674,287	5,953,921	279,633	4.9%	6,189,491	235,571	4.0%
Benefits	2,422,116	2,537,023	114,908	4.7%	2,610,687	73,664	2.9%
Travel	372,000	300,000	(72,000)	-19.4%	300,000	-	0.0%
Rent /Comm/Util	33,000	42,000	9,000	27.3%	42,000	-	0.0%
Administrative	38,000	42,000	4,000	10.5%	42,000	-	0.0%
Contracted Services	628,000	491,000	(137,000)	-21.8%	491,000	-	0.0%
Total	**$ 9,167,403**	**$ 9,365,944**	**$ 198,541**	**2.2%**	**$ 9,675,179**	**$ 309,235**	**3.3%**

OFFICE OF EXAMINATION AND INSURANCE: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**48.0**	**52.0**	**4.0**	**8.3%**	**52.0**	**-**	**-**
Employee Compensation	12,322,892	13,404,524	1,081,632	8.8%	14,341,215	936,691	7.0%
Salaries	8,740,497	9,537,130	796,633	9.1%	10,246,880	709,750	7.4%
Benefits	3,582,395	3,867,393	284,999	8.0%	4,094,334	226,941	5.9%
Travel	809,425	638,068	(171,357)	-21.2%	638,068	-	0.0%
Rent /Comm/Util	28,940	41,100	12,160	42.0%	41,100	-	0.0%
Administrative	513,912	428,164	(85,748)	-16.7%	428,164	-	0.0%
Contracted Services	1,123,880	1,591,023	467,143	41.6%	1,591,023	-	0.0%
Total	**$ 14,799,048**	**$ 16,102,879**	**$ 1,303,830**	**8.8%**	**$ 17,039,570**	**$ 936,691**	**5.8%**

Note: Minor rounding differences may occur in totals.

OFFICE OF GENERAL COUNSEL: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**45.0**	**46.0**	**1.0**	**2.2%**	**46.0**	**-**	**-**
Employee Compensation	12,658,940	13,248,880	589,940	4.7%	13,711,181	462,301	3.5%
Salaries	9,054,019	9,489,528	435,509	4.8%	9,846,759	357,231	3.8%
Benefits	3,604,921	3,759,352	154,432	4.3%	3,864,422	105,069	2.8%
Travel	150,000	100,000	(50,000)	-33.3%	100,000	-	0.0%
Rent /Comm/Util	14,000	10,000	(4,000)	-28.6%	10,000	-	0.0%
Administrative	5,000	7,000	2,000	40%	7,000	-	0.0%
Contracted Services	397,000	415,000	18,000	4.5%	415,000	-	0.0%
Total	**$ 13,224,940**	**$ 13,780,880**	**$ 555,940**	**4.2%**	**$ 14,243,181**	**$ 462,301**	**3.4%**

OFFICE OF HUMAN RESOURCES: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**44.0**	**45.0**	**1.0**	**2.3%**	**45.0**	**-**	**-**
Employee Compensation	11,040,194	11,860,037	819,843	7.4%	12,228,126	368,089	3.1%
Salaries	7,028,848	7,577,672	548,824	7.8%	7,859,925	282,253	3.7%
Benefits	4,011,346	4,282,365	271,020	6.8%	4,368,201	85,835	2.0%
Travel	1,180,000	3,066,000	1,886,000	159.8%	1,736,000	(1,330,000)	-43.4%
Rent /Comm/Util	59,500	409,700	350,200	588.6%	149,700	(260,000)	-63.5%
Administrative	714,000	1,150,100	436,100	61.1%	958,200	(191,900)	-16.7%
Contracted Services	3,236,275	4,038,253	801,978	24.8%	4,338,253	300,000	7.4%
Total	**$ 16,229,969**	**$ 20,524,090**	**$ 4,294,121**	**26.5%**	**$ 19,410,279**	**$ (1,113,811)**	**-5.4%**

OFFICE OF EXTERNAL AFFAIRS AND COMMUNICATION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**14.0**	**14.0**	**-**	**-**	**14.0**	**-**	**-**
Employee Compensation	3,306,201	3,455,676	149,475	4.5%	3,574,994	119,318	3.5%
Salaries	2,343,353	2,439,214	95,861	4.1%	2,530,623	91,409	3.7%
Benefits	962,847	1,016,461	53,614	5.6%	1,044,370	27,909	2.7%
Travel	102,000	117,000	15,000	14.7%	117,000	-	0.0%
Rent /Comm/Util	38,900	38,500	(400)	-1.0%	38,500	-	0.0%
Administrative	98,000	108,900	10,900	11.1%	108,900	-	0.0%
Contracted Services	1,655,500	1,744,000	88,500	5.3%	1,744,000	-	0.0%
Total	**$ 5,200,601**	**$ 5,464,076**	**$ 263,475**	**5.1%**	**$ 5,583,394**	**$ 119,318**	**2.2%**

Note: Minor rounding differences may occur in totals.

EASTERN REGION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**281.0**	**266.0**	**(15.0)**	**-5.3%**	**273.0**	**7.0**	**2.6%**
Employee Compensation	53,530,699	51,962,216	(1,568,482)	-2.9%	56,212,925	4,250,709	8.2%
Salaries	36,764,457	35,500,474	(1,263,982)	-3.4%	38,318,678	2,818,204	7.9%
Benefits	16,766,242	16,461,742	(304,500)	-1.8%	17,894,247	1,432,505	8.7%
Travel	4,386,000	4,814,000	428,000	9.8%	5,197,400	383,400	8.0%
Rent /Comm/Util	262,868	236,850	(26,018)	-9.9%	236,850	-	0.0%
Administrative	221,103	226,620	5,517	2.5%	226,620	-	0.0%
Contracted Services	172,000	137,985	(34,015)	-19.8%	137,985	-	0.0%
Total	**$ 58,572,669**	**$ 57,377,671**	**$ (1,194,998)**	**-2.0%**	**$ 62,011,780**	**$ 4,634,109**	**8.1%**

SOUTHERN REGION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**228.0**	**228.0**	**-**	**-**	**233.0**	**5.0**	**2.2%**
Employee Compensation	42,844,294	42,880,346	36,052	0.1%	46,713,003	3,832,656	8.9%
Salaries	29,293,325	29,080,907	(212,418)	-0.7%	31,595,185	2,514,277	8.6%
Benefits	13,550,969	13,799,439	248,470	1.8%	15,117,818	1,318,379	9.6%
Travel	4,216,912	5,764,512	1,547,600	36.7%	6,147,812	383,300	6.6%
Rent /Comm/Util	318,000	369,670	51,670	16.2%	369,670	-	0.0%
Administrative	209,254	259,173	49,919	23.9%	259,173	-	0.0%
Contracted Services	431,350	258,765	(172,585)	-40.0%	258,765	-	0.0%
Total	**$48,019,810**	**$49,532,466**	**$1,512,656**	**3.2%**	**$53,748,422**	**$4,215,956**	**8.5%**

WESTERN REGION: 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**243.0**	**246.0**	**3.0**	**1.2%**	**251.0**	**5.0**	**2.0%**
Employee Compensation	44,809,863	48,091,550	3,281,686	7.3%	51,959,308	3,867,759	8.0%
Salaries	30,658,633	32,803,198	2,144,564	7.0%	35,398,945	2,595,748	7.9%
Benefits	14,151,230	15,288,352	1,137,122	8.0%	16,560,363	1,272,011	8.3%
Travel	4,884,000	6,049,000	1,165,000	23.9%	6,432,300	383,300	6.3%
Rent /Comm/Util	648,500	712,000	63,500	9.8%	712,000	-	0.0%
Administrative	261,200	193,200	(68,000)	-26.0%	193,200	-	0.0%
Contracted Services	226,000	206,000	(20,000)	-8.8%	206,000	-	0.0%
Total	**$50,829,563**	**$55,251,750**	**$4,422,187**	**8.7%**	**$59,502,808**	**$4,251,059**	**7.7%**

Note: Minor rounding differences may occur in totals.

ASSET MANAGEMENT AND ASSISTANCE CENTER 2023–2024 BUDGET SUMMARY							
	2022 Board Approved Budget	2023 Requested Budget	2022–2023 Change	Change Percent	2024 Requested Budget	2023–2024 Change	Change Percent
Positions	**0.0**	**22.0**	**22.0**	**100.0%**	**22.0**	**-**	**-**
Employee Compensation		5,024,744	5,024,744	-	5,201,424	176,680	3.5%
Salaries		3,520,833	3,520,833	-	3,656,009	135,175	3.8%
Benefits		1,503,911	1,503,911	-	1,545,416	41,505	2.8%
Travel		139,200	139,200	-	139,200	-	0.0%
Rent /Comm/Util		15,015	15,015	-	15,015	-	0.0%
Administrative		45,425	45,425	-	45,425	-	0.0%
Contracted Services		118,500	118,500	-	118,500	-	0.0%
Total	**$ -**	**$ 5,342,884**	**$ 5,342,884**	**-**	**$ 5,519,564**	**$ 176,680**	**3.3%**

Note: Minor rounding differences may occur in totals.

NATIONAL CREDIT UNION ADMINISTRATION: CAPITAL INVESTMENT PROJECTS			
Description	**2022 Board Approved**	**2023 Requested**	**2024 Requested**
Information Technology Investments			
Executive Order on Cybersecurity	$ 1,400,000	$ 3,070,000	$ 3,741,000
Continuous Diagnostics and Mitigation (CDM)	$ -	$ 520,000	$ -
Information Technology Infrastructure, Platform and Security Refresh	$ 1,600,000	$ 3,139,000	$ -
MERIT Enhancements	$ 875,000	$ 713,000	$ 641,000
Enterprise Systems Modernization (ESM) Data Reporting Services	$ 739,000	$ 790,000	$ 805,000
Enterprise Data Program	$ 350,000	$ 350,000	$ 200,000
Consumer Access Process and Reporting Information System (CAPRIS)	$ -	$ 400,000	$ -
Mobile Device Refresh	$ -	$ 959,000	$ -
Enhanced Testing Capability	$ -	$ 250,000	$ -
Independent Verification and Validation (IV&V) Testing Team	$ -	$ 466,000	$ -
NCUA Website Development	$ 100,000	$ 100,000	$ 100,000
Data Collection and Sharing Solution	$ -	$ -	$ 1,100,000
System Updates for Significant Regulatory Changes	$ 1,000,000	$ -	$ -
CU Locator and Research a Credit Union Updates	$ 240,000	$ -	$ -
Anticipated Additional Software Development Investments	$ -	$ -	$ 4,170,000
Enterprise Laptop Lease	$ 5,000,000	$ -	$ -
Hybrid Work Environment (Conference room and equipment upgrades)	$ 265,000	$ -	$ -
Total, Information Technology Investments	**$ 11,569,000**	**$ 10,757,000**	**$ 10,757,000**
Capital building improvements and repairs			
Central Office maintenance and repair	$ -	$ 472,000	$ 477,000
Central Office HVAC System Replacement	$ 1,500,000	$ -	$ -
Total, Capital building improvements and repairs	**$ 1,500,000**	**$ 472,000**	**$ 477,000**
Grand Total, Capital Projects	**$ 13,069,000**	**$ 11,229,000**	**$ 11,234,000**

Project name	**Executive Order on Improving the Nation's Cybersecurity**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025***	**2026***
	Acquisition	$1,400	$3,070	$3,741	TBD	TBD
	Operations and Maintenance				TBD	TBD
	*Estimated budget for 2025 and beyond is "TBD" because investments will depend on the results of the gap analysis, which is scheduled to be completed by the end of 2022.					
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This multi-year capital investment will enable the NCUA to comply with Executive Order 14028, helping the NCUA achieve strategic objective 3.2, to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data."					
Project description	The purpose of the Executive Order on Cybersecurity capital investment is to ensure the NCUA complies with Executive Order 14028, *Improving the Nation's Cybersecurity*. The project will enable the appropriate applications to use multi-factor authentication, implement a zero-trust architecture for the NCUA's infrastructure and applications, and shift computing and storage resources from on-premise to a cloud service provider.					

Project name	**Continuous Diagnostics and Mitigation**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$0	$520	$0	$0	$0
	Operations and Maintenance	$0	$0	$150	$150	$150
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This capital investment will help the NCUA achieve strategic objective 3.2, to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by maturing agency cybersecurity programs and protections and promoting a cybersecurity risk-awareness culture.					
Project description	The objective of the Continuous Diagnostics and Mitigation project is to enhance the overall security posture of the NCUA with capabilities to monitor vulnerabilities and threats in near real-time. This is achieved by implementing capabilities and technical controls to identify what is on the network, who is on the network, what is happening on the network, and to protect data in use, transit, and at rest. Near-real-time monitoring increases situational awareness and will allow the NCUA to prioritize actions to mitigate or accept cybersecurity risks based on the potential impact to the NCUA mission. Specific capabilities planned for delivery in 2023 include a cyber threat intelligence and information sharing platform and tools to continually assess and develop the knowledge, skills, and competencies of the NCUA's cybersecurity workforce. A cyber threat intelligence and information sharing platform is essential for the NCUA to identify threat actors and campaigns that are targeting the NCUA, mitigate the risks, and get ahead of cyber threat actors and respond faster to internal NCUA incidents. The cyber workforce development effort will conduct cybersecurity diagnostic assessments to provide insight into overall employee skill gaps and offer prescriptive guidance for training. The initiative will also include cyber risk seminars for NCUA executives and executive-level cyber crisis tabletop exercises.					

Project name	**Information Technology Infrastructure, Platform, and Security Refresh**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	All NCUA					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$1,600	$3,139	$0	$0	$0
	Operations and Maintenance	$1,068	$1,068	$0	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This capital investment will help the NCUA achieve strategic objective 3.2, to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by identifying and implementing service improvements to replace end-of-life and unsupported systems currently in place at the NCUA. This investment reduces the impact of continuing to leverage services with increased risk of vulnerabilities and/or agency mission impacting outages by implementing more secure and user enhanced services.					
Project description	This project will refresh network and platform hardware, as well as migrate new infrastructure, application, and workload components to the cloud. Investment in these projects ensures business continuity and efficient operations by improving system availability and stability. Projects include refreshing hardware, software, customer facing devices, and the professional services required to migrate and harden the information technology services for production readiness.					

Project name	**MERIT Enhancements**					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: E&I, ONES, All Field Program Offices, OCIO, CURE, OHR, and OCFP External: Credit Unions, State Supervisory Authorities (SSAs)					
Budget	**$ in thousands**	**2022***	**2023****	**2024**	**2025**	**2026**
	Acquisition	$875	$713	$641	$2,511	TBD
	Operations and Maintenance	$11,322	$12,029	$13,762	$13,180	TBD
	*An additional $200K in acquisitions was funded in the 2022 Share Insurance Fund Administrative Budget to support SSA data feeds. **An additional $216K in acquisitions is funded in the 2023 Share Insurance Fund Administrative Budget to move the PartnerGateway to NCUA Connect.					
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound and viable system of cooperative credit that protects consumers. The Examination and Supervision Solution (ESS), commonly called MERIT, will enable credit union examiners to fulfill NCUA strategic objective 1.2, "provide effective and efficient supervision," by providing a more effective and secure examination tool. Goal 3: Maximize organizational performance to enable mission success. ESS will enable credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data."					
Project description	In 2022, the NCUA continued to invest in the MERIT tool and its related suite of examination and supervision solutions tools (*e.g.*, NCUA Connect, DEXA, Admin Portal) to support user adoption. Program investments were used to fix priority system bugs and improve overall user experience; incorporate additional legacy applications into the NCUA Connect system to meet multi-factor authentication security requirements; upgrade platforms to enhance security controls and achieve Section 508 compliance; and deploy new functionality such as improved data access for SSAs. In 2023, the NCUA will make additional MERIT data available in the Enterprise Central Data Repository to enhance field operations and enable future self-service reporting and business intelligence analysis as part of the Data Reporting Solution program. Additionally, the 2023 capital investments will be used to transition SSA access to MERIT from the PartnerGateway to NCUA Connect, removing service duplication, streamlining SSA system access, and ensuring that security controls meet FedRAMP standards. The NCUA's 2024 capital investments will expand NCUA staff access to examination data and integrate the NCUA's Information Security Examination Program tool with MERIT, which will transfer the tool's data into MERIT to save staff time.					

Project name	**Data Reporting Solution (DRS)**					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA Offices External: N/A					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$739	$790	$805	$550	$550
	Operations and Maintenance	$0	$133	$133	$133	$133
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers. The DRS will enable agency staff to better fulfill their responsibility to "provide effective and efficient supervision," which is NCUA strategic objective 1.2. This will provide staff with a modern, self-service business intelligence environment enabling more responsive, powerful, and innovative data analysis and reporting capabilities. Goal 3: Maximize organizational performance to enable mission success. The DRS will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data." It will provide a modern business intelligence data environment designed to meet the self-service capability and analytic needs of staff across the agency for efficient and effective data access, use, collaboration, and communication.					
Project description	The Data Reporting Solution is part of the NCUA's Enterprise Solution Modernization program. DRS is focused on implementing a business intelligence solution for enhanced data access, integrity, analytics, and reporting. The Enterprise Data Program provides leadership on business and governance process needs for DRS. DRS' data-related investments iteratively build towards the objective of integrating the NCUA's legacy enterprise data and new MERIT data into structures that can be leveraged by the business for self-service development of reporting and analytic work products. NCUA's 2020 data maturity assessment confirmed the need for improved access and functionality in using data, with a strong desire for a common, self-service business intelligence capability for efficient and effective use by staff. DRS will provide a modern self-service business intelligence tool for the enterprise, as well as access to data to enable staff to utilize the tool efficiently and effectively. DRS leverages other key modernization initiatives — the Enterprise Central Data Repository (ECDR), which is the new enterprise data integration point and platform to support data and analytic initiatives, as well as expanded examination data in MERIT, the NCUA's new examination platform.					

	• Delivering a new business intelligence environment will require an iterative delivery of new functionality, including:
	• Deploying an enterprise business intelligence tool (*e.g.*, tool access, data access, and training) for to business data staff to use with the legacy data environment.
	• Developing new analytic data structures in the ECDR designed and organized for increased business value and self-service.
	  • The initial data set necessary to address many NCUA reporting and analytic use cases (focused largely on available exam and call report data) will be a subset of NCUA's enterprise data.
	  • Iterative ongoing development will continue to incorporate additional enterprise data over time, based on prioritization of available data.
	• Iteratively transitioning the business intelligence tool data sources from legacy to newly developed ECDR-based analytic data structures optimized and validated for business use.
	• Integrating MERIT exam data into the ECDR so it is ready to incorporate into the new analytic data structures for self-service.
	• Obtaining and implementing metadata management software to provide a business data glossary, quality, lineage, and governance functionality.
	• Sunsetting, repointing (to new analytic data sources in ECDR), and recreating key legacy enterprise reports.
	• Maintaining the new analytic data structures as part of the ECDR environment, as well as the licensing to enable enterprise-level functionality of the business intelligence tool, and the metadata management solution.

Project name	**Enterprise Data Program (EDP)** *formerly Enterprise Data Analytics, Governance and Reporting Services*					
Project sponsor	Office of Business Innovation					
Customers/ beneficiaries	Internal: All NCUA Offices External: N/A					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$350	$350	$200	$200	$200
	Operations and Maintenance	$0	$0	$150	$150	$150
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers. The EDP will enable agency staff to better fulfill their responsibility to "provide effective and efficient supervision," which is NCUA strategic objective 1.2, by maturing data management practices in order to ensure the use of high-quality data in operations, reporting, and analytics. Goal 3: Maximize organizational performance to enable mission success. The EDP will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by managing enterprise data via effective collaboration among stakeholders on new data standards — as the data lifecycle involves offices across the agency.					
Project description	The NCUA's Chief Data Officer leads the EDP. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle. The program focus is to improve the agency's effectiveness by maturing data management practices to ensure the use of high-quality data in operations, reporting, and analytics. This is a highly collaborative effort to facilitate alignment across offices and performance of data-related work. Additionally, the EDP provides the overall business leadership and strategic direction for the DRS as part of the NCUA's Enterprise Solution Modernization Program. The EDP reduces risks facing the current data environment and improves the NCUA's overall reporting and data analysis capabilities. This will be accomplished through governed data and as well as a governed self-service business intelligence capability to conduct risk analysis and target exams and supervision where needed to enhance the agency's ability to adapt to institution and industry conditions.					

Project name	**Consumer Access Process and Reporting Information System (CAPRIS)**					
Project sponsor	Office of Credit Union Resource Expansion (CURE)					
Customers/ beneficiaries	Internal: CURE External: Credit unions					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$0	$400	$0	$0	$0
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services. The CAPRIS upgrade project will ensure that the CAPRIS system can be used by credit unions that request adding occupational and associational groups of more than 3,000 potential members to their field of membership. Streamlining process for credit unions to change their field of membership will help achieve strategic objective 2.1 "enhance consumer access to affordable, fair, and federally insured financial products and services."					
Project description	CAPRIS is the application that replaced the legacy GENISIS and FOMIA systems that credit unions used to request changes to field of membership, which were then reviewed and processed by the CURE staff. The expanded CAPRIS system will process all occupational and associational common bond groups regardless of potential membership size. Currently, credit unions use the paper-based Form 4015 and Form 4015A to request the addition of groups greater than 3,000 potential members to their field of membership. CURE staff reviews and processes these requests manually. Since 2018, 353 groups with a potential membership of 33.9 million were requested, reviewed, and processed manually. This software upgrade will allow credit unions to request any occupational and associational groups greater than 3,000 potential members through the CAPRIS application. Having the ability to process and review groups of any size through CAPRIS will reduce administrative burden for credit unions and increase processing efficiencies. In addition, credit unions will be able to utilize the CAPRIS document upload and library feature, which will save time as waiting for documents is often the most time-consuming part of adding a group to a multiple common-bond credit union's field of membership.					

Project name	**Mobile Device Refresh**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	NCUA Staff					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$0	$959	$0	$0	$0
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This project will help the NCUA achieve strategic objective 3.2 "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data." Replacing the NCUA's fleet of outdated and out of support mobile devices will minimize the risk of downtime and device failure often associated with older devices and telecommunications technologies. NCUA employees will get mobile devices that can leverage the advantages of new 5G networks and will improve connectivity to NCUA's modernized applications and infrastructure. The new devices will provide staff with enhanced functionality and improved security features that will increase user productivity and mobility.					
Project description	The purpose of the Mobile Device Refresh is to replace the outdated or out of support mobile devices currently used by the NCUA's staff. The new mobile devices will be more secure and compatible with current technologies.					

Project name	**Enhanced Testing Capability**					
Project sponsor	Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: All NCUA offices External: Credit unions and the public					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$0	$250	$0	$0	$0
	Operations and Maintenance	$0	$0	$255	$0	$0
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers. The enhanced testing capability will enable agency staff to better fulfill their responsibility to "provide effective and efficient supervision," which is NCUA strategic objective 1.2, by providing high-quality, low-defect, and secure applications to support examination and supervision functions. Goal 3: Maximize organizational performance to enable mission success. The enhanced testing capability will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by providing high-quality, low-defect, and secure applications that enable mission support and examination and supervision functions.					
Project description	The NCUA's software applications are developed and maintained in accordance with the OCIO-approved software development lifecycle and undergo a full range of quality assurance reviews to ensure they meet functional, performance, and security standards. This project will invest in additional testing resources to improve the quality of the NCUA's applications and to meet the needs of a growing application portfolio by building out and executing additional test cases for NCUA applications.					

Project name	**Independent Verification and Validation (IV&V) Testing Team**					
Project sponsor	Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: All NCUA offices External: Credit unions and the public					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$0	$466	$0	$0	$0
	Operations and Maintenance	$0	$0	$475	$485	$496
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers. The IV&V testing team will enable agency staff to better fulfill their responsibility to "provide effective and efficient supervision," which is NCUA strategic objective 1.2, by providing high-quality, low-defect, and secure applications to support examination and supervision functions. Goal 3: Maximize organizational performance to enable mission success. The IV&V testing team will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "Deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by providing high-quality, low-defect, and secure applications that enable mission support and examination and supervision functions.					
Project description	NCUA applications are developed and maintained in accordance with the OCIO-approved software development lifecycle and undergo a full range of quality assurance reviews to ensure they meet functional, performance, and security standards. To improve the quality of the NCUA's applications, an independent team of IV&V testers will provide an unbiased review to ensure that implemented software meets requirements. The IV&V team will confirm that requirements are correctly defined and systems adequately implement the required business functionality and security requirements. This team will perform comprehensive reviews, analyses, and testing to ensure system quality.					

Project name	**NCUA Website Development**					
Project sponsor	Office of External Affairs and Communications (OEAC)					
Customers/ beneficiaries	NCUA and Website Users (internal and external)					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$100	$100	$100	$100	$100
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The website updates and merger project will help the NCUA achieve strategic objective 3.2, which is to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data." The project's gated content solution will allow the agency to host online conferences rather than procuring an outside vendor on a per event basis. Additionally, the NCUA is considering whether to consolidate MyCreditUnion.gov into NCUA.gov.					
Project description	The NCUA is developing a gated content solution for specific NCUA.gov audiences that provides a level of privacy and security for accessing information, such as conference materials, by requiring a login and password similar to other remote and virtual conference systems. The NCUA web operations team is also considering whether to consolidate and migrate MyCreditUnion.gov into NCUA.gov/Consumers to improve user experiences, enhance functionality, reduce duplication of efforts, and promote greater NCUA brand cohesion.					

Project name	**Headquarters Minor Construction and Maintenance Projects**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All NCUA headquarters building occupants External: All NCUA headquarters building visitors					
Budget	**$ in thousands**	**2022**	**2023**	**2024**	**2025**	**2026**
	Acquisition	$247	$472	$477	$480	$480
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Investments in minor construction and maintenance projects will improve facility operations and building efficiency, safety, and functionality at the NCUA's Central Office building. The headquarters facility was built in 1993 and is 29 years old. The average life span of many building components is between 20 and 25 years. Aged, outdated, and failing building components and systems pose a threat to the performance of the NCUA's mission. Collectively these investments will maximize organizational performance and enable mission success, for example, by improving building accessibility for NCUA employees and the public through installation of Americans with Disability Act-compliant entryways; conserving natural resources through installation of energy efficient devices and equipment; and protecting and maintaining the building's exterior and interior finishes.					
Project description	OCFO has completed an assessment of building systems and conditions and has prioritized critical building improvements projects that could be completed incrementally over two or more budget years rather than in a single year, thereby mitigating the potential budgetary impact within a single year, while establishing long-term building management and maintenance needs and cycles for recurring maintenance and replacement of aging building systems and components.					

Project name	**Financial Management Process Automation**					
Project sponsor	Office of the Chief Financial Officer (OCFO)					
Customers/ beneficiaries	Internal: OCFO External: NCUA Offices					
Budget	**$ in thousands**	**2022**	**2023***	**2024**	**2025**	**2026**
	Acquisition	$0	$0	$0	$0	$0
	Operations and Maintenance	$0	$0	$0	$0	$0
* $400,000 was provided in the 2020 capital budget for Integrated Financial Management Systems, which is proposed to be repurposed for Financial Management Process Automation in 2023.						
Link to NCUA strategic goals	Strategic Goal 3: Maximize organizational performance to enable mission success. This project is expected to result in more efficient business processes that improve internal controls and enhance accountability, which aligns with the NCUA's strategic objectives 3.2, which is to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data," and 3.3, which is to "ensure sound organizational governance." OCFO is committed to leveraging and implementing innovative technological solutions that are currently available within the NCUA IT infrastructure and endorsed by the OCIO. This project also supports OCFO efforts as the risk lead for the Agency Controls enterprise risk, to reduce risk in financial reporting.					
Project description	OCFO is directly responsible for the NCUA's financial operations and reporting. The core accounting system and ancillary financial systems that support these key financial activities lack integration and functionality, resulting in a high volume of manual processes. The 2023 budget refocuses $400,000 previously approved by the NCUA Board for efforts to implement technology-based solutions to automate manual financial and budgetary processes. The $400,000 was originally intended to improve financial integration and automation by evaluating options for moving away from the current accounting platform and service hosted by the Enterprise Service Center (ESC), which is part of the Department of Transportation. Since 2020, the ESC has improved its services and systems capabilities and is planning enhancements that could foster and support automation and integration efforts at NCUA. Rather than planning to move away from the ESC platform, the NCUA now expects to better leverage that system and ancillary systems and processes. Planned activities in 2023 include optimizing and prioritizing OCFO financial processes for automation, building technical competencies within the OCFO staff on business intelligence tools, establishing a governance and configuration management structure for these activities, and reducing manual process activity.					

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Part III

Environmental Protection Agency

40 CFR Part 52

Clean Air Plans; 2012 Fine Particulate Matter Serious Nonattainment Area Requirements; San Joaquin Valley, California; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0884; FRL–9292–03–R9]

Clean Air Plans; 2012 Fine Particulate Matter Serious Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 29, 2021, the Environmental Protection Agency (EPA or ''Agency'') published a proposed rule to approve the State of California's Serious area plan for the San Joaquin Valley (SJV) for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) for all Serious $PM_{2.5}$ area planning requirements, except for contingency measures, which the EPA proposed to disapprove. Based on adverse comments submitted on that proposed rule and as a result of a Ninth Circuit Court of Appeals decision on a related SJV $PM_{2.5}$ rulemaking for the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA has reconsidered its prior proposal and now proposes to disapprove the State's plan for certain Serious area planning requirements for the 2012 annual $PM_{2.5}$ NAAQS. The nonattainment plan elements that the EPA proposes to disapprove include the plan's best available control measures (BACM) demonstration for ammonia and building heating, demonstrations of attainment and reasonable further progress, quantitative milestones, and motor vehicle emission budgets. The EPA is also proposing to disapprove the State's optional precursor demonstration for ammonia. We are not re-proposing any action on the Serious area requirements for emissions inventories nor contingency measures; our prior proposal to approve the emissions inventory element and to disapprove the contingency measure element of the nonattainment plan requirements for the 2012 annual $PM_{2.5}$ NAAQS remains unchanged. The EPA will accept comments on this new proposed rule during a 45-day public comment period and public hearing, as described in this notice.

DATES: Any comments must arrive by November 21, 2022.

Public hearings: The EPA will host two public hearings on this proposed rule. The first will take place November 2, 2022, 7:30 p.m. to 8:30 p.m. The second will take place November 3, 2022, 7:00 p.m. to 8:00 p.m. The hearings will be held to accept oral comments on this proposed rule. Immediately prior to each public hearing, and on October 28, 2022, the EPA will host public meetings on this proposed rule. For further information on the public hearings and public meetings, please see the **ADDRESSES** and **SUPPLEMENTAL INFORMATION** sections.

ADDRESSES: The November 2, 2022 public hearing will take place at Fresno City College, Old Administration Building, Room 251, 1101 E University Ave., Fresno, CA 93741. The November 3, 2022 public hearing will take place at Bakersfield College, Norman Levan Center, 1801 Panorama Drive, Bakersfield, CA 93305.

Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0884, at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed rule, please contact Rory Mays, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3227. For questions regarding the public hearings and related public meetings, please contact Kelley Xuereb, Immediate Office (AIR–1), EPA Region IX, (415) 947–4171. Both can be reached by emailing *SJVPublicMeetings@epa.gov.*

SUPPLEMENTARY INFORMATION: In addition to the two in-person public hearings, the EPA will host three public meetings. The public meetings are an informal opportunity to speak with EPA staff about the action. We will not accept public comments during the public meetings. The first meeting will be held virtually on October 28, 2022, 12:00 p.m. to 2:00 p.m. Participants can register to attend the meeting at: *https://usepa.zoomgov.com/meeting/register/vJItc-qppzooGCZI10LqoTXf6OpNZIVbWco.*

The second will take place on November 2, 2022, 5:30 p.m. to 7:00 p.m. prior to the public hearing at Fresno City College, Old Administration Building, Room 251, 1101 E University Ave., Fresno, CA 93741. The third will take place on November 3, 2022, 5:00 p.m. to 6:30 p.m. prior to the public hearing at Bakersfield College, Norman Levan Center, 1801 Panorama Drive, Bakersfield, CA 93305. Spanish translation will be available during all three events. If you would like to submit a request for reasonable accommodation, please email *SJVPublicMeetings@epa.gov.* For additional information and updates, please visit: *https://www.epa.gov/sanjoaquinvalley.*

Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background for Proposed Action

The EPA discussed background, applicable State implementation plan (SIP) submissions, completeness review, and Clean Air Act (CAA or ''Act'') requirements for the SJV Serious $PM_{2.5}$

nonattainment area [1] in sections I, II, and III of our December 29, 2021 proposed rule on California's Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS.[2] We refer to that proposed rule herein as the ''2021 Proposed Rule,'' briefly summarize the relevant CAA requirements and our previous proposed action with respect to those requirements here, and rely on the more detailed expositions in that proposed rule.

The EPA promulgated the primary annual $PM_{2.5}$ NAAQS of 12.0 micrograms per cubic meter (μg/m³) in 2012 (''2012 annual $PM_{2.5}$ NAAQS''),[3] designated and classified the SJV as Moderate nonattainment for this NAAQS in 2015,[4] and reclassified the SJV from Moderate to Serious nonattainment for this NAAQS in our final rule published November 26, 2021.[5] That reclassification action required California to submit a ''Serious area'' attainment plan. Such an attainment plan must include, among other things, provisions to assure that, under CAA section 189(b)(1)(B), the BACM for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented no later than four years after reclassification of the area and a demonstration (including air quality modeling) that the plan provides for attainment of this NAAQS as expeditiously as practicable but no later than December 31, 2025. That reclassification action also triggered statutory deadlines for California to submit SIP submissions addressing the Serious area attainment plan requirements for the 2012 annual $PM_{2.5}$ NAAQS: June 27, 2023, for emissions inventories, BACM, and nonattainment new source review (NSR), and December 31, 2023, for the attainment demonstration and related planning requirements.

A. Applicable SIP Submissions, Completeness Review, and Clean Air Act Requirements

In this proposed rule, the EPA is proposing action on portions of two SIP submissions submitted by the California Air Resources Board (CARB) to address combined nonattainment plan requirements for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS in the SJV.[6] Specifically, the EPA is proposing to act only on those portions of the following two plan submissions that pertain to the Serious area requirements for the 2012 annual $PM_{2.5}$ NAAQS: (1) the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) on November 15, 2018, and by CARB on January 24, 2019 (''2018 $PM_{2.5}$ Plan'');[7] and (2) the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,'' adopted by CARB on October 25, 2018 (''Valley State SIP Strategy'').

We refer to the relevant portions of these SIP submissions collectively in this proposal as the ''SJV $PM_{2.5}$ Plan'' or ''Plan.'' The SJV $PM_{2.5}$ Plan addresses attainment plan requirements for multiple $PM_{2.5}$ NAAQS in the SJV. CARB submitted the SJV $PM_{2.5}$ Plan to the EPA as a revision to the California SIP on May 10, 2019.[8] These SIP submissions became complete by operation of law on November 10, 2019.[9] In the 2021 Proposed Rule, we proposed to find that the 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy each met the procedural requirements for public notice and hearing in CAA sections 110(a)(1) and (2) and 110(l) and 40 CFR 51.102.

In our 2021 Proposed Rule, we also summarized the CAA requirements applicable to Serious $PM_{2.5}$ nonattainment areas.[10] In the current proposed rule, we are proposing action with respect to the following requirements:

(1) Provisions to assure that BACM, including best available control technology (BACT), for the control of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors shall be implemented no later than four years after the area is reclassified (CAA section 189(b)(1)(B)), unless the State elects to make an optional precursor demonstration that the EPA approves authorizing the State not to regulate one or more of these pollutants;

(2) A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than the end of the tenth calendar year after designation as a nonattainment area (*i.e.,* December 31, 2025, for the SJV for the 2012 annual $PM_{2.5}$ NAAQS) (CAA sections 188(c)(2) and 189(b)(1)(A)(i));

(3) Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2));

(4) Quantitative milestones that the State must meet every three years until the EPA redesignates the area to attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c)); and

(5) Motor vehicle emissions budgets (budgets) for 2025 (CAA section 176(c)).

We are also proposing to disapprove the State's optional precursor demonstration for ammonia.[11]

In addition, the State's Serious area plan must meet the general requirements applicable to all SIP submissions under section 110 of the CAA, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding, and authority under section 110(a)(2)(E); and the requirements concerning enforcement provisions in section 110(a)(2)(C).

[1] For a precise description of the geographic boundaries of the SJV $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

[2] 86 FR 74310 (December 29, 2021).

[3] 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. Unless otherwise noted, all references to the $PM_{2.5}$ standards in this notice, including all instances of ''2012 annual $PM_{2.5}$ NAAQS,'' are to the 2012 primary annual NAAQS of 12.0 μg/m³ codified at 40 CFR 50.18.

[4] 80 FR 2206 (January 15, 2015) (codified at 40 CFR 81.305).

[5] 86 FR 67343 (November 26, 2021).

[6] In our 2021 Proposed Rule, we also proposed action on a third SIP submission dated July 19, 2019. 86 FR 74310, 74311. However, the relevant component of that submission pertained only to contingency measures, and we are not modifying our proposed action on contingency measures in this proposed rule.

[7] The 2018 $PM_{2.5}$ Plan was developed jointly by CARB and the District.

[8] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX. Previously, in separate rulemakings, the EPA has finalized action on the portions of the SJV $PM_{2.5}$ Plan that pertain to the 1997 annual $PM_{2.5}$ NAAQS, the 1997 24-hour $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS. See 86 FR 67329 (November 26, 2021) (final rule regarding the 1997 annual $PM_{2.5}$ NAAQS); 87 FR 4503 (January 28, 2022) (final rule regarding the 1997 24-hour $PM_{2.5}$ NAAQS); 85 FR 44192 (July 22, 2020) (final rule regarding the 2006 24-hour $PM_{2.5}$ NAAQS, except contingency measures); and 86 FR 67343 (November 26, 2021) (final rule regarding the Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS and contingency measures for the 2006 24-hour $PM_{2.5}$ NAAQS).

[9] 87 FR 74310, 74311–74312. We note that, with respect to plans previously required for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS, including the Moderate area plan only for the 2012 annual $PM_{2.5}$ NAAQS, the EPA had made findings of failure to submit effective January 7, 2019, that triggered sanctions clocks. 83 FR 62720 (December 6, 2018). Following the May 10, 2019 submission of the 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy, the EPA affirmatively determined that the SIP submissions addressed the deficiency that was the basis for such findings, resulting in the termination of the associated sanctions clocks. Letter dated June 24, 2020, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Richard W. Corey, Executive Officer, CARB. However, the findings of failure to submit did not apply to the Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS because it was not yet required, and the June 24, 2020 completeness letter did not address the Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS.

[10] 87 FR 74310, 74313.

[11] We are not re-proposing any action on the Serious area requirements for emissions inventories nor contingency measures; our prior proposal to approve the emissions inventory element and to disapprove the contingency measure element of the nonattainment plan requirements for the 2012 annual $PM_{2.5}$ NAAQS remains unchanged.

The EPA provided its preliminary views on the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble''); [12] (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (''General Preamble Supplement''); [13] and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble Addendum'').[14] More recently, in an August 24, 2016 final rule entitled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' (''$PM_{2.5}$ SIP Requirements Rule''), the EPA established regulatory requirements and provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for all $PM_{2.5}$ NAAQS.[15] We discuss these regulatory requirements and interpretations of the Act as appropriate in our evaluation of the State's submissions below.

B. December 29, 2021 Proposed Rule

In our 2021 Proposed Rule, the EPA proposed to approve the SJV $PM_{2.5}$ Plan's: (1) emissions inventory for the 2013 base year; (2) precursor demonstrations that emissions of ammonia, sulfur oxides (SO_X), and volatile organic compounds (VOC) do not significantly contribute to exceedances of the 2012 annual $PM_{2.5}$ NAAQS in the SJV; (3) BACM demonstration for emission sources of direct $PM_{2.5}$ and nitrogen oxides (NO_X); (4) attainment demonstration based on air quality modeling [16] and emissions reductions related to aggregate commitments; (5) RFP demonstration; (6) quantitative milestones; and (7) motor vehicle emission budgets. We briefly summarize several aspects of those proposed approvals in the applicable sub-sections of section II of this proposed rule.

We also proposed to disapprove the Plan's contingency measures and noted the requirements for nonattainment NSR and the State's separate submission for the nonattainment NSR requirements. However, as we are not re-proposing any action on contingency measures nor nonattainment NSR in this proposed rule, we do not summarize those proposals herein.[17] In addition, we are not re-proposing any action on the Plan's precursor demonstrations for SO_X and VOC in this proposed rule; our 2021 Proposed Rule to approve the 2018 $PM_{2.5}$ Plan's demonstrations that emissions of SO_X and VOC do not significantly contribute to exceedances of the 2012 annual $PM_{2.5}$ NAAQS in the SJV remains unchanged.

Finally, we are not re-proposing any action in this proposed rule on the Plan's base year emissions inventory; our 2021 Proposed Rule to approve the 2018 $PM_{2.5}$ Plan's base year emissions inventory remains unchanged. Nevertheless, we briefly summarize our prior proposal [18] given the role that base year emissions inventories play in developing a plan's control strategy and attainment and RFP demonstrations.

The 2018 $PM_{2.5}$ Plan includes summaries of the planning emissions inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X,[19] VOC,[20] and ammonia) and related documentation. The Plan contains annual average daily emission inventories for 2013 through 2028 projected from the 2012 actual emissions inventory,[21] including the 2013 base year, the 2019 and 2022 RFP milestone years, the 2025 Serious area attainment year, and a 2028 post-attainment RFP year. The EPA proposed to approve the 2013 base year emissions inventory in the 2018 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. We also proposed to find that the future year baseline inventories in the 2018 $PM_{2.5}$ Plan satisfy the requirements of 40 CFR 51.1008(b)(2) and 51.1012(a)(2) and provide an adequate basis for the control measure, attainment, and RFP demonstrations for the 2012 annual $PM_{2.5}$ NAAQS in the 2018 $PM_{2.5}$ Plan.

C. Adverse Comments Submitted January 28, 2022

The EPA received adverse comments on our 2021 Proposed Rule from a coalition of 13 environmental, public health, and community organizations (collectively referred to herein as ''Public Justice'').[22] We are not responding to these comments (in the sense of a final rulemaking action) in this proposed rule, but the Agency has taken them into account with respect to the Serious area plan elements discussed in this proposed rule.

Overall, the commenters argue that the EPA must disapprove the 2012 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan based on alleged nonattainment plan requirement deficiencies in the submissions. We introduce these comments in this section of this proposed rule and present more detailed summaries and discussion of the comments in sections II.A (ammonia precursor demonstration), II.B.2 (BACM for ammonia emission sources), II.B.3 (BACM for building heating emission sources), II.C (attainment demonstration), and IV (Title VI of the Civil Rights Act).

Regarding CAA requirements for $PM_{2.5}$, Public Justice points to a history of failures to timely attain the 1997 annual $PM_{2.5}$ NAAQS in the SJV and states that ''[r]egulators point to a host of excuses from weather, to international sources, to Federal inaction, but repeatedly the State and Air District have refused to adopt feasible controls or regulate politically powerful entities'' such as agricultural sources of air pollution.[23] The commenters take issue with the EPA's proposal to approve the plan for the stricter 2012 standard ''without performing its duty to hold [CARB] and the [District] accountable to meet the

[12] 57 FR 13498 (April 16, 1992).

[13] 57 FR 18070 (April 28, 1992).

[14] 59 FR 41998 (August 16, 1994).

[15] 81 FR 58010 (August 24, 2016).

[16] We described 2018 $PM_{2.5}$ Plan's air quality modeling and our evaluation thereof in section IV.C of the 2021 Proposed Rule.

[17] Regarding nonattainment NSR, please see the EPA's separate rulemaking on the State's November 20, 2019 SIP submission of amendments to SJVUAPCD Rule 2201 (''New and Modified Stationary Source Review''). 87 FR 45730 (July 29, 2022) (proposed limited approval and limited disapproval of the Rule 2201 amendments).

[18] See section IV.A of the EPA's 2021 Proposed Rule.

[19] The SJV $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this notice.

[20] The SJV $PM_{2.5}$ Plan generally uses ''reactive organic gasses'' or ''ROG'' in reference to VOC as a precursor to the formation of $PM_{2.5}$. We use ROG and VOC interchangeably throughout this notice.

[21] 2018 $PM_{2.5}$ Plan, App. B, B–18.

[22] Comment letter dated and received January 28, 2022, from Brent Newell, Public Justice, et al., to Rory Mays, EPA, including Exhibits 1 through 47. We note, however, that there is no Exhibit 23; so, there are 46 exhibits in total. Email dated February 1, 2022, from Brent Newell, Public Justice, to Rory Mays, EPA Region IX. The 13 environmental, public health, and community organizations are Public Justice, Central Valley Environmental Justice Network, Association of Irritated Residents, Central Valley Air Quality Coalition, Leadership Counsel for Justice and Accountability, Valley Improvement Projects, The LEAP Institute, Little Manila Rising, Center for Race, Poverty, and the Environment, Central California Asthma Collaborative, Animal Legal Defense Fund, National Parks Conservation Association, and Food and Water Watch (collectively ''Public Justice'').

[23] Public Justice Comment Letter, 2.

minimum requirements Congress imposed to protect human health.'' [24] The commenters assert that the EPA relies on flawed, outdated information, ignores feasible controls, refuses to require regulation of ammonia, accepts aggregate commitments in lieu of other control strategies, and fails to address pollution sources in disadvantaged communities in the SJV.[25] With respect to specific CAA requirements, the commenters argue that the EPA must disapprove the Plan's emissions inventory, ammonia precursor demonstration, BACM demonstration, and aggregate commitments.

Regarding Title VI of the Civil Rights Act, the commenters argue that California must provide necessary assurances that the SIP complies with Title VI of the Civil Rights Act, pursuant to CAA section 110(a)(2)(E), and failed to do so.[26] The commenters state that ''$PM_{2.5}$ pollution has a disparate impact on the basis of race in the San Joaquin Valley'' and assert that the Plan fails to meet CAA requirements and ''deliberately ignores obvious sources and control options and inflicts disparate impacts on Black, Latino, Indigenous, and people of color'' in the SJV. Therefore, the commenters advocate that the EPA must disapprove the 2012 annual $PM_{2.5}$ portion of the SJV $PM_{2.5}$ Plan.[27] We address the commenters' Title VI comments in section IV of this proposed rule.

The EPA is now proposing to disapprove the Plan with respect to certain CAA requirements (BACM/BACT for ammonia emission sources, BACM/BACT for building heating emission sources, aggregate commitments, attainment demonstration, RFP demonstration, quantitative milestones, and motor vehicle emission budgets). However, we are not in this proposal comprehensively addressing all issues raised in the Public Justice comment letter.[28]

D. Ninth Circuit Decision on Related SJV $PM_{2.5}$ Plan

In a final rule published July 22, 2020, the EPA finalized approval of the portions of the SJV $PM_{2.5}$ Plan [29] that addressed the 2006 24-hour $PM_{2.5}$ NAAQS (except for contingency measures, which the EPA acted on in a subsequent action).[30] On September 17, 2020, a group of five environmental, public health, and community groups (collectively referred to herein as ''Medical Advocates'') petitioned the Ninth Circuit Court of Appeals (''Ninth Circuit'' or ''Court'') for review of the EPA's July 22, 2020 final rule.[31] On April 13, 2022, the Ninth Circuit issued a Memorandum opinion that granted in part and denied in part the petition (''Memorandum Opinion'').[32]

The Ninth Circuit denied the petitioners' challenge with respect to the EPA's approval of enforceable commitments in general and the EPA's approval of the Plan's demonstration of BACM, BACT, and most stringent measures (MSM) for emission sources of direct $PM_{2.5}$ and NO_X for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS.

Significantly, however, the Ninth Circuit also denied in part and granted in part the petitioners' challenge with respect to the EPA's approval of the specific enforceable commitments employed as part of the SJV $PM_{2.5}$ Plan's control strategy to attain the 2006 24-hour $PM_{2.5}$ NAAQS in the SJV by December 31, 2024. The EPA evaluates enforceable commitments based on three factors: (1) the commitment represents a limited portion of the required emission reductions, (2) the State is capable of fulfilling its commitment, and (3) the commitment is for a reasonable and appropriate timeframe. The Ninth Circuit denied the petitioners' challenge with respect to the first and third factors but granted the petitioners' challenge with respect to the second factor.

The Ninth Circuit found that the EPA had misapplied the second factor concerning the State's ability to fulfill the aggregate commitments. The Court reasoned that EPA ''fail[ed] to provide evidence or a reasoned explanation for its conclusion that California will be able to fulfill its commitment'' in the face of a potential multi-billion dollar funding shortfall for incentive-based control measure commitments, ''which could result in emission reduction shortfalls of approximately 7% of the total NO_X reductions and 8% of the total $PM_{2.5}$ reductions necessary for attainment.'' [33] The Court also rejected the EPA's arguments that: (1) the funding shortfall may be smaller than projected, (2) emission reductions may be less expensive than the strategy predicts, (3) certain yet-to-be-quantified sources of reductions in the Plan may make up for shortfalls, and (4) California and the District may identify other measures to fulfill their commitments. Instead, the Court decided that, ''[b]ecause these speculative assertions are unsupported by the evidence, they fail to ensure that California and the District have a plausible strategy for achieving this portion of the attainment strategy, and therefore do not collectively satisfy the second factor of the EPA's three-factor test.'' [34] The Court concluded that the EPA's analysis with respect to the second factor for evaluating enforceable commitments was arbitrary and capricious, vacated the final rule with respect to this factor, and remanded the matter to the EPA for further consideration of the second factor.[35]

The EPA is currently considering how to address the Court's vacatur and remand with respect to the 2006 24-hour $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan and is not proposing any action with respect to those standards in this proposed rule. However, the Ninth Circuit's decision is very relevant to this proposed rule because the State relied on a common control strategy, including the same enforceable commitments (*i.e.,* the same set of control measure commitments and aggregate tonnage commitments) for purposes of both the 2006 24-hour $PM_{2.5}$ NAAQS Serious area plan and the 2012 annual $PM_{2.5}$ NAAQS Serious area plan. The EPA acknowledges the deficiency in the factual support for the aggregate commitments identified by the Ninth Circuit and that this remains the case. If the EPA cannot approve the aggregate commitments, then this has a direct bearing on other elements of the State's Serious area SIP submissions for the 2012 annual $PM_{2.5}$ NAAQS. As discussed in section II.C of this proposed rule, based on our reconsideration of the facts concerning the enforceable commitments in the SJV $PM_{2.5}$ Plan with respect to the 2012 annual $PM_{2.5}$ NAAQS in light of the Ninth Circuit's decision, the EPA now proposes to disapprove the State's enforceable commitments and attainment demonstration.

[24] Id.

[25] Id. at 3.

[26] Id. at 10–14.

[27] Id. at 1 and 21.

[28] Additional source categories named by Public Justice include, for example, residential wood burning, open burning, conservation management practices at farming operations, soil NO_X emissions, stationary agricultural internal combustion engines, and cleaner mobile agricultural equipment engines. Public Justice Comment Letter, 18–20.

[29] 85 FR 44192.

[30] 86 FR 67343 (disapproving contingency measures for the 2006 24-hour $PM_{2.5}$ NAAQS).

[31] *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #1 (9th Cir., September 17, 2020). The five environmental, public health, and community organizations, in order of appearance in the petition, are Medical Advocates for Healthy Air, National Parks Conservation Association, Association of Irritated Residents, and Sierra Club (collectively ''Medical Advocates'').

[32] *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #58–1 (9th Cir., April 13, 2022).

[33] Id. at 6.

[34] Id. at 7.

[35] Id. at 10.

II. Reconsideration of the San Joaquin Valley Serious $PM_{2.5}$ Plan

The EPA has reconsidered its 2021 Proposed Rule, based on adverse comments on that prior proposal and based on a Ninth Circuit Court of Appeals decision on a related SJV $PM_{2.5}$ rulemaking. After careful consideration of the issues raised by commenters and the court, the EPA now proposes to disapprove the State's plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV for certain Serious area planning requirements, including: (1) the Plan's precursor demonstration for ammonia; (2) BACM for ammonia emission sources and BACM for building heating emission sources; (3) the modeled attainment demonstration; (4) the RFP demonstration; (5) quantitative milestones; and (6) motor vehicle emission budgets.

In sections II.A through II.C of this proposed rule, pertaining to the Plan's precursor demonstration for ammonia as a $PM_{2.5}$ precursor; BACM/BACT analysis, and modeled attainment demonstration (including reliance on enforceable commitments), we present a brief summary of the 2021 Proposed Rule, a summary of the adverse comments and Ninth Circuit order, as appropriate, and our reconsidered proposal. In sections II.D and II.E, pertaining to the Plan's RFP demonstration, quantitative milestones, and motor vehicle emission budgets, we present a brief summary of the 2021 Proposed Rule and our reconsidered proposal.[36] We also note that sections II.A (ammonia precursor demonstration) and II.B.1 (BACM for ammonia emission sources) are inter-related in that potential control measures for ammonia emission sources play a role in both: (1) selecting a reasonable percent emission reduction to evaluate modeled ambient $PM_{2.5}$ responses to ammonia emission reductions; and (2) assessing the availability and application of BACM to such sources in the SJV.

A. Ammonia Precursor Demonstration

1. Summary of 2021 Proposed Rule

In our 2021 Proposed Rule, the EPA described the requirements for $PM_{2.5}$ precursor pollutants, summarized the State's submissions in the SJV $PM_{2.5}$ Plan, and presented our evaluation thereof.[37] We briefly summarize those here with respect to the Plan's demonstration for ammonia as a precursor to $PM_{2.5}$ for purposes of the 2012 annual $PM_{2.5}$ NAAQS in the SJV. For a comprehensive discussion of Federal requirements for $PM_{2.5}$ precursors and a summary of California's submission, please refer to the following headings in Section IV.B of the 2021 Proposed Rule: (1) Requirements for Control of $PM_{2.5}$ Precursors; and (2) Summary of State's Submission.

Regarding CAA requirements applicable to $PM_{2.5}$ precursors, we explained that the attainment plan requirements of Title I, subpart 4 apply to emissions of direct $PM_{2.5}$ and emissions of NO_X, ammonia, SO_2, and VOC as $PM_{2.5}$ precursors from all types of stationary, area, and mobile sources, except as otherwise provided in the Act. We further described how the EPA interprets section 189(e) concerning regulation of precursors from major stationary sources to authorize it to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other sources in a given nonattainment area is not necessary.

As explained in the $PM_{2.5}$ SIP Requirements Rule, a State may elect to submit to the EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area.[38] The contribution analysis may consider the sensitivity of $PM_{2.5}$ to decreases in emissions of the precursor, in addition to the contribution to ambient concentrations of $PM_{2.5}$.[39] If the EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, then the State is not required to control emissions of the relevant precursor in the attainment plan.[40]

The EPA issued the ''$PM_{2.5}$ Precursor Demonstration Guidance'' (''$PM_{2.5}$ Precursor Guidance''),[41] to provide recommendations to states for analyzing nonattainment area $PM_{2.5}$ and $PM_{2.5}$ precursor emissions and developing such optional precursor demonstrations, consistent with the $PM_{2.5}$ SIP Requirements Rule. The guidance also describes how the State may use a sensitivity-based test, in which the modeled sensitivity or response of ambient $PM_{2.5}$ concentrations to changes in emissions of the precursor is estimated and then compared to a contribution threshold. In addition to comparing the concentration or modeled response to the threshold, the State can consider other information in assessing whether the precursor significantly contributes. The EPA's recommended annual average contribution threshold for the 2012 annual $PM_{2.5}$ NAAQS is 0.2 $\mu g/m^3$.[42] In other words, if the estimated contribution of a precursor at monitors is below this threshold, the EPA considers this evidence that the precursor does not contribute significantly to levels above the $PM_{2.5}$ NAAQS in the area in question; above this threshold, the EPA considers this evidence that the precursor does contribute significantly. The EPA considers this evidence in conjunction with additional information that the State may provide, and determines whether or not the precursor contributes significantly, and so whether the State must evaluate and implement controls of the precursor emissions to the appropriate level (*e.g.,* BACM).

The State presents its precursor demonstration primarily in Appendix G of the 2018 $PM_{2.5}$ Plan, with additional clarifying information in a series of emails available in the docket for this proposed rule. The State estimates that anthropogenic emissions of NO_X, ammonia, SO_X, and VOC will decrease by 64 percent (%), 1%, 6%, and 9%, respectively, between 2013 and 2025 based on its projected emissions accounting for existing and additional control measures in the Serious area plan.[43] Through a concentration-based analysis, CARB found that ammonium nitrate constituted 5.2 $\mu g/m^3$ of the annual average $PM_{2.5}$ concentrations measured at the Bakersfield California Avenue monitor in 2015, exceeding the recommended threshold,[44] and proceeded to conduct a sensitivity-based analysis.

For analytical purposes in accordance with the EPA's guidance, the State then modeled the sensitivity of ambient $PM_{2.5}$ to hypothetical 30% and 70% reductions in anthropogenic emissions of ammonia in SJV for modeled years

[36] The Plan's RFP demonstration, quantitative milestones, and motor vehicle emission budgets were not the direct subject of adverse comments nor the Ninth Circuit decision. However, they are based on the Plan's control strategy to attain the 2012 annual $PM_{2.5}$ NAAQS and, thus, the flaws in the Plan's control strategy affect these additional required elements.

[37] 86 FR 74310, 74317–74321.

[38] 40 CFR 51.1006(a)(1).

[39] 40 CFR 51.1006(a)(1)(ii).

[40] 40 CFR 51.1006(a)(1)(iii).

[41] ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004, May 2019, including Memo dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA.

[42] $PM_{2.5}$ Precursor Guidance, 17.

[43] 2018 $PM_{2.5}$ Plan, Ch. 7, 7–5 and Table 7–2.

[44] 2018 $PM_{2.5}$ Plan, App. G, 3.

2013, 2020, and 2024. The results for 2024 are a proxy for the Plan's modeled attainment year of 2025 for the 2012 annual $PM_{2.5}$ NAAQS. For the 30% reduction results for 2024, upon which the State primarily relied, 2 out of 15 monitoring sites in SJV (Madera and Hanford) had modeled responses to ammonia reductions that were above the threshold. The ambient $PM_{2.5}$ response declines substantially from 2020 to 2024, with the decline being generally larger for the sites with the highest projected $PM_{2.5}$ levels. The State supplements the sensitivity analysis for ammonia with consideration of additional information such as emission trends, the appropriateness of future year versus base year sensitivity, available emission controls, and the severity of nonattainment.[45]

The State's precursor demonstration for ammonia also presents a review of District agricultural rules that control VOC emissions, but also provide ammonia reduction co-benefits. The State concludes that a 30% reduction is a reasonable upper bound on the potential ammonia reductions to model. Finally, the State's precursor demonstration presents extensive support for the State's conclusion that there is an ambient excess of ammonia relative to nitrate, *i.e.,* that particulate ammonium nitrate formation in SJV is NO_X-limited, and will become increasingly NO_X-limited as NO_X reductions increase into the future from the State's motor vehicle control program and other measures the State intends to undertake in the Serious area plan. Based on the forgoing considerations, the State concludes that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

The EPA presented its initial evaluation of the State's ammonia precursor demonstration in section IV.B.3.a of the 2021 Proposed Rule, with more detailed summaries and evaluation in two EPA technical support documents (TSDs): ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's $PM_{2.5}$ Precursor TSD''), and ''Technical Support Document, EPA Evaluation of Ammonia Precursor Demonstration, San Joaquin Valley Moderate Area $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS,'' August 2021 (''EPA's Ammonia Precursor TSD'').

We noted that the EPA's $PM_{2.5}$ Precursor Guidance provides for consideration of future year sensitivity and that consideration of additional information beyond the concentration-based and sensitivity-based analyses may be appropriate in assessing a precursor's significance. We summarized the State's assertions that 30% is a reasonable upper bound for potential ammonia emission reductions based on research cited in Appendix C of the 2018 $PM_{2.5}$ Plan concerning ammonia emissions and potential control options for agricultural sources.[46] However, we did not elaborate in the 2021 Proposed Rule as to why we proposed to agree that 30% was a reasonable upper bound.

We stated that ambient $PM_{2.5}$ responses to ammonia emission reductions decline over time, and in concert with the large projected NO_X emission reductions, with the largest declines occurring at sites with highest projected $PM_{2.5}$ levels. For the two sites (Madera and Hanford) where the State's modeled response in 2024 to a 30% ammonia emission reduction exceeded the recommended 0.2 $\mu g/m^3$ threshold, we evaluated additional information and, based on that information, gave the modeled projected responses above the threshold at these sites less weight.

We also considered studies cited by CARB on the 2013 DISCOVER–AQ aircraft measurements and 2017 satellite measurements, both of which suggest that ammonia concentrations are underestimated in the SJV. We noted that if modeled ammonia concentrations were closer to observations, then the modeled response to ammonia precursor reductions would be lower than shown in the 2018 $PM_{2.5}$ Plan's precursor demonstration. Similarly, an increase in modeled ambient ammonia concentrations would also make the model response more consistent with the evidence from the multiple ambient measurement studies that suggest a very low ambient sensitivity to ammonia, based on measured excess ammonia relative to NO_X, the abundance of particulate nitrate relative to gaseous NO_X, and the large abundance of ammonia relative to nitric acid. These ambient measurement studies all conclude that there is a large amount of ammonia left over after reacting with NO_X, so that ammonia emission reductions would be expected mainly to reduce the amount of ammonia excess, rather than to reduce the particulate ammonium nitrate, and thus provided strong evidence independent of the modeling that ambient $PM_{2.5}$ levels would respond comparatively weakly to ammonia emissions reductions.

Regarding changes in the effect of ammonia emission reductions over time as other pollutant levels change, we stated it was appropriate to consider changes in atmospheric chemistry that may occur between the base or current year and the attainment year because the changes may ultimately affect the nonattainment area's progress toward expeditious attainment. We stated that the 2024 model results would in this case better represent the point in time at which it is appropriate to evaluate what potential ammonia controls could achieve, because of the steep decline in NO_X emissions the State projects will occur by 2024 and 2025 as a result of existing or intended control measures. We also noted that the projected annual average $PM_{2.5}$ concentration of 12.0 $\mu g/m^3$, occurring at the Bakersfield-Planz monitoring site in 2025, would be reduced by 0.12 $\mu g/m^3$, which would not be considered significant (it is below the EPA's recommended threshold of 0.2 $\mu g/m^3$).

In sum, we concluded that the State had evaluated the sensitivity of ambient $PM_{2.5}$ levels to potential reductions in ammonia emissions using appropriate modeling techniques; the modeled response to ammonia reductions is likely lower than reported; and the State's choice of 2024 and 2025 as the reference points for purposes of evaluating the sensitivity of ambient $PM_{2.5}$ levels to ammonia emission reductions was well-supported. Based on all of these considerations, the EPA previously proposed to approve the State's demonstration that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

2. Summary of Adverse Comments

Public Justice states that the ''EPA must disapprove the ammonia precursor demonstration'' and that ''CARB's tortured analysis (and EPA's proposed acceptance of it)'' is arbitrary and capricious. The commenter makes several assertions in support of this comment.[47]

First, Public Justice notes that CARB's analysis concluded that ammonia contributes 5.2 $\mu g/m^3$ to annual average $PM_{2.5}$ concentrations, and that this is well above the EPA's recommended annual average contribution threshold of 0.2 $\mu g/m^3$.[48] The commenters also

[45] Id. at App. G, 5.

[46] EPA's $PM_{2.5}$ Precursor TSD, 13.

[47] Public Justice Comment Letter, 16–18.

[48] The commenters note that 38% of the annual average ambient $PM_{2.5}$ in Bakersfield is ammonium nitrate. Public Justice Comment Letter, 6. See also, 2018 $PM_{2.5}$ Plan, Ch. 3, Figure 3–2 (''Bakersfield $PM_{2.5}$ Speciation (Average 2011 to 2013)'').

took issue with CARB and the EPA's arguments that such results overstate the role of ammonia because NO_X emissions decline over time, and the EPA's decision to look at the results of sensitivity modeling for the response of ambient $PM_{2.5}$ levels to potential ammonia emission reductions in the future year 2024. The commenters assert that this analytical approach of considering the projected sensitivity to ammonia reductions in the future year ''ignores the statutory imperative to demonstrate attainment as expeditiously as practicable,'' per CAA section 172(a)(2)(A), and that, even after evaluating the impact ''for the most favorable date'' (2024), CARB still found significant contribution for ammonia above the EPA's recommended threshold.

Second, Public Justice questioned CARB's reliance and the EPA's proposed acceptance of a sensitivity analysis that assumed only a 30% modeled reduction of ammonia emissions. Public Justice points out that the EPA's guidance for precursor demonstrations suggests that states should evaluate the effect of reducing emissions between 30% and 70%, and states that ''CARB argues, and EPA agrees, that only the minimal 30 percent control level is reasonable'' despite large ammonia sources (*e.g.,* ''industrial dairy and poultry operations'') never having been regulated in the SJV and the prospect for relatively easier and cheaper emission reductions than those for NO_X.[49] The commenters argue that ''[t]he analysis of potential controls is particular[ly] weak and ignores the wealth of literature demonstrating that strategies for reducing ammonia emissions from agriculture . . . are among the most effective for reducing PM concentrations,'' and cite several studies in support of this argument. The commenters further state that reducing ammonia emissions may be achieved through ''strategies such as improving livestock feed to reduce excreted nutrients, altering manure storage and handling practices to prevent [ammonia] emissions, and improving synthetic fertilizer use efficiency,'' again citing numerous studies.[50] The commenters state that agriculture is responsible for over 80% of ammonia emissions, and that confined animal facilities (CAFs) and fertilizer application account for 57% and 36%, respectively.[51] Moreover, the commenters assert that ''[n]o real analysis of control potential is offered'' in the State's precursor demonstration.

Third, with respect to the State and the EPA's evaluation of modeled ambient $PM_{2.5}$ responses to ammonia emission reductions in 2024, Public Justice states that, in the low (30%) emission scenario, 2 of 15 monitoring sites have responses over the 0.2 $\mu g/m^3$ recommended threshold and that the EPA argues ''with extremely biased evidence, that the results at one of the two monitors could be ignored and that ammonia emissions area likely underestimated.'' The commenters assert that ''EPA points to evidence that 'the State did not discuss' to discount the results'' for the Madera monitor, and that the EPA ''offers no excuse for discrediting the results at the other monitor.''

Fourth, the commenters claim that the EPA's evaluation of the precursor demonstration looked at supplemental ammonia emission studies but ignored supplemental studies showing that NO_X emissions from soil (''soil NO_X'') may be significantly underestimated. Public Justice states that the State and the EPA ''assert that NO_X emissions will be significantly reduced by 2024 even though the Plan currently does not explain how those NO_X reductions will occur.'' The commenters state that such approach is ''a one-sided attempt to explain away modeled results that ammonia contributes significantly to $PM_{2.5}$'' in the SJV and cannot overcome the Act's presumption that precursors must be controlled.

Finally, beyond the assertion that the State's precursor demonstration with respect to ammonia, and the EPA's proposed approval of it are incorrect, the commenters also argue that the State's failure to address ammonia as a precursor to $PM_{2.5}$ has disparate impacts on certain communities within SJV and ''avoids difficult political fights by sacrificing communities of color.'' Finally, the commenters refer to a 2021 research study that estimates that 1,690 people in California die annually due to agricultural ammonia emissions.[52]

3. The EPA's Reconsidered Proposal

The EPA agrees with certain points made by the commenters with respect to ammonia and disagrees with others. Overall, based on the adverse comments from Public Justice and a re-evaluation of the information provided by the State, we now conclude that the weight of evidence is insufficient to establish that ammonia does not contribute significantly to $PM_{2.5}$ levels above the NAAQS in the SJV. The EPA's further evaluation indicates that it is appropriate to retain the statutory presumption that ammonia must be regulated as a precursor for the 2012 annual $PM_{2.5}$ NAAQS in the SJV. Accordingly, if the EPA finalizes disapproval of the State's ammonia precursor demonstration, ammonia would remain a plan precursor, and the SJV would remain subject to the requirements to identify and implement BACM, BACT, and additional feasible measures on sources of ammonia emissions.

We first address the portion of the comment related to the sensitivity of the modeled $PM_{2.5}$ response to reductions in ammonia emissions and then turn to the portion of the comment addressing the amount of ammonia reductions that may be available.

a. Comments Related to Sensitivity Modeling Results

The measured ammonium nitrate portion of the annual average $PM_{2.5}$ concentration in Bakersfield in 2015 was 5.2 $\mu g/m^3$.[53] This is well above the EPA's recommended threshold in the $PM_{2.5}$ Precursor Guidance. However, the $PM_{2.5}$ SIP Requirements Rule, as interpreted by that guidance, provides the option for a State to conduct an analysis of the sensitivity of ambient $PM_{2.5}$ concentrations to emission reductions of a precursor pollutant to evaluate the significance of that precursor,[54] as the State did for the 2012

[49] Public Justice Comment Letter, 2, 5, and 16–17, and Exhibits 31 through 34.

[50] Public Justice Comment Letter, 16–17, Exhibits 35 through 40 and three additional studies: N. Cole, et al., ''Influence of dietary crude protein concentration and source on potential ammonia emissions from beef cattle manure,'' J. Anim. Sci. 83, 722, 2005; N. Cole, P. Defoor, M. Galyean, G. Duff, J. Gleghorn, ''Effects of phase-feeding of crude protein on performance, carcass characteristics, serum urea nitrogen concentrations, and manure nitrogen of finishing beef steers,'' J. Anim. Sci. 12, 3421–3432, 2006; and R. Todd, N. Cole, R. Clark, ''Reducing crude protein in beef cattle diet reduces ammonia emissions from artificial feedyard surfaces,'' J. Environ. Qual. 35, 404–411, 2006.

[51] Public Justice Comment Letter, 5–6, 16, citing See EPA Region IX, ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS.'' We note that our TSD in turn cited to State data sources, including the 2018 $PM_{2.5}$ Plan, App. G, Figure 3.

[52] Public Justice Comment Letter, 18. See Domingo, N.G.G., Balasubramanian, S., Thakrar, S.K., Clark, M.A., Adams, P.J., Marshall, J.D., Muller, N.Z., Pandis, S.N., Polasky, S., Robinson, A.L., Tessum, C.W., Tilman, D., Tschofen, P., & Hill, J.D., ''Air quality–related health damages of food,'' Proceedings of the National Academy of Sciences (Vol. 118, Issue 20, p. e2013637118), 2021, available at *https://doi.org/10.1073/pnas.2013637118,* attached as Exhibit 35. See **SUPPLEMENTARY INFORMATION** for ''Air quality-related health damages of food,'' Table S2 (''Annual emissions and mortality caused by agricultural production in the 10 states where emissions of (A) primary $PM_{2.5}$, (B) NH_3, (C) NO_X, (D) SO_2, and (E) NMVOCs lead to the highest total mortality'').

[53] 86 FR 74310, 74318 and 2018 $PM_{2.5}$ Plan, App. G, 3.

[54] 40 CFR 51.1006(a)(1)(ii).

annual $PM_{2.5}$ NAAQS in the SJV. Thus, the concentration-based contribution analysis alone (*i.e.,* the 5.2 μg/m³) is not necessarily determinative of a precursor's significance.

The commenters stated that reliance on a sensitivity-based test for 2024 ignores the statutory imperative for expeditious attainment. But, as noted in the preamble for the $PM_{2.5}$ SIP Requirements Rule in explaining the rationale for a sensitivity-based test, ''if conditions in a particular area are such that control of sources of one or more precursors does not reduce $PM_{2.5}$ concentrations in the area, then those controls will not help the area attain (expeditiously or otherwise).'' [55] Thus, if a precursor demonstration were to show that control of a particular precursor is not effective for reaching attainment, then the absence of such control would not violate the requirement for expeditious attainment.

As commenters noted, the State relied on its sensitivity-based contribution analysis for a future year (2024) to evaluate the significance of ammonia as a precursor to ambient $PM_{2.5}$ concentrations in the San Joaquin Valley. In our 2021 Proposed Rule, we discussed the State's selection of 2024 as an acceptable analysis year, given the projected steep decline in ambient $PM_{2.5}$ sensitivity to ammonia reductions over time as a result of projected changes in emissions (*i.e.,* large NO_X emission reductions as contemplated in the Plan, through existing measures and aggregate commitments), consistent with the facts and circumstances recommended for consideration in the EPA's $PM_{2.5}$ Precursor Guidance.[56]

The $PM_{2.5}$ Precursor Guidance provides for consideration of sensitivity in an appropriate future year.[57] Based on the State's control strategy, including baseline emission reduction measures and its control measure and aggregate tonnage commitments, the State estimated it would achieve over 200 tpd NO_X reductions by 2024, representing over 60% of the 2013 base year emissions inventory for NO_X.[58] Existing baseline measures already in the SIP are projected by the State to reduce annual average NO_X emissions in the SJV by 173.5 tpd, which is 83.7% of the 207.38 tpd of NO_X reductions modeled to attain the 2012 annual $PM_{2.5}$ NAAQS. Over 90% of the baseline NO_X reductions between 2013 and 2025 are due to the existing mobile source control program.[59] These reductions will occur regardless of any EPA action on the precursor demonstration or the 2018 $PM_{2.5}$ Plan as a whole. Similarly, additional measures adopted by the State through the end of 2021 further reduce NO_X emissions. Given the large NO_X emission reductions projected to occur by 2024 and 2025, the EPA has concluded that that the 2024 sensitivity model results better represent the atmospheric chemistry around the attainment date and in subsequent years than sensitivity modeling results from 2013 and even 2020.[60] Due to continued existing and anticipated NO_X reductions, the apparent $PM_{2.5}$ benefit of ammonia reductions in earlier years declines with time and does not reflect the ultimate, lower, benefit of such controls near the attainment year and later.

Thus, the EPA reasons that the Plan's baseline and additional control measures will change (and have already changed) the atmospheric chemistry conditions in the SJV, leading to ambient $PM_{2.5}$ formation that is much less sensitive to ammonia emission reductions in the attainment year. We maintain that the State's reliance on its sensitivity-based contribution analysis for 2024 to evaluate the significance of ammonia as a precursor is reasonable, well supported, and consistent with the $PM_{2.5}$ SIP Requirements Rule and EPA guidance.

The commenter correctly states that 2 of 15 sites in the 2024 model scenario based on a 30% reduction in ammonia emission were modeled to have an ambient $PM_{2.5}$ response greater than the EPA's recommended contribution threshold of 0.2 μg/m³. However, we disagree with the commenter's characterization that our further review of the sensitivity of the Madera and Hanford sites to ammonia emission reductions was argued ''with extremely biased evidence.'' [61]

For the Madera monitor (estimated sensitivity of 0.21 μg/m³ in 2024 to a 30% ammonia emission reduction), the commenter refers to the EPA's statement that the 2018 $PM_{2.5}$ Plan did not discuss the evidence for the 2013 monitored concentrations at this site being biased high (as a matter of the physical recordings of the monitor). However, the EPA did reference the State's prior analysis of such evidence, which we considered in our evaluation.[62] Aside from pointing out that this analysis was not included in the Plan itself, the comment does not offer analysis to the contrary, and the EPA continues to think that we reasonably weighed the technical information before us and, given the role of the 2013 monitored data in the sensitivity modeling conducted by the State, correctly concluded that ''if more typical Madera concentrations were used, it is likely that the 2024 Madera response to ammonia reductions would be below the contribution threshold'' and that the extra year of NO_X reductions from 2024 to 2025 would likely decrease the sensitivity below the recommended 0.2 μg/m³ threshold.

We further disagree with the commenter's assertion that we offered no reason for giving less weight to modeled sensitivity results for the Hanford monitor (estimated sensitivity of 0.26 μg/m³ in 2024 to a 30% ammonia emission reduction). We stated that we gave both Madera and Hanford modeled sensitivity lower weight in our overall assessment of ammonia as a precursor. Specifically for Hanford, we described evidence that the modeled sensitivity there was likely overestimated. That evidence included an independent study using data from the 2013 DISCOVER–AQ campaign that ''found that the [CMAQ] model underestimated ammonia at Hanford by a roughly a factor of four or five.'' [63] In our assessment, if the model's ammonia concentrations better matched the observations then there would be more of an ammonia excess in the model, and the modeled response to ammonia reductions would be lower.

More broadly, prior to publishing the 2021 Proposed Rule, the EPA reviewed available research including from supplemental materials from CARB, and found a consistent theme based on modeling analyses and ambient measurement studies—that ''there is a large amount of ammonia left over after reacting with NO_X, so that ammonia emission reductions would be expected mainly to reduce the amount of ammonia excess, rather than to reduce the particulate ammonium nitrate.'' [64] It is important to note that this ammonia excess is *measured,* and is independent

[55] 81 FR 58010, 58025.

[56] 86 FR 74310, 74320–74321 and $PM_{2.5}$ Precursor Guidance, 35.

[57] $PM_{2.5}$ Precursor Guidance, 35.

[58] 86 FR 74310, 74327, Table 4.

[59] 2018 $PM_{2.5}$ Plan, App. B, Table B–2.

[60] We address the potential impact of ammonia emissions on the requirement for expeditious attainment in our re-evaluation of the attainment demonstration in section II.C.3, below.

[61] Public Justice Comment Letter, 18.

[62] 86 FR 74310, 74320, fn. 91, and fn. 92. This analysis concluded that 2011–2013 Madera data did not fit the geographic pattern historically seen in relation to other monitors but returned to the historic pattern after corrections were made to the monitoring instrument operating procedures. Concentrations were estimated to be about 10% high during the period in question.

[63] 86 FR 74310, 74320.

[64] Id. See also, EPA's Ammonia Precursor TSD.

of any assumptions about the size of the ammonia or NO_X emissions inventories, and also independent of any uncertainties in the modeling exercise. The concerns raised by Public Justice about relative levels of ammonia and NO_X estimation are not sufficient to cause the EPA to revise the conclusion that $PM_{2.5}$ is likely to have low sensitivity to ammonia reductions, which is supported by the actual observed conditions. The ambient measurement evidence is strong and leads the EPA to believe that the modeled response to ammonia in the State's precursor demonstration may be overestimated. Therefore, we maintain that the EPA may give lower weight to the modeled sensitivities of ambient $PM_{2.5}$ concentrations to ammonia emission reductions at the Madera and Hanford sites.

The commenter states that the EPA's argument on the relative levels of ammonia and NO_X emissions looks at such ammonia studies but ''ignores supplemental studies showing that . . . soil NO_X emissions [may be significantly underestimated].'' [65] Unlike the general consensus in the ammonia studies described above, with respect to the amount of NO_X emitted by soil in the SJV the EPA believes that there is conflicting research. A conclusion of Almaraz et al. (2018) and Sha et al. (2021) cited by the commenters is that soil NO_X emissions are underestimated, and that they comprise 30–40% of total NO_X emission in California. While higher levels of soil NO_X (or NO_X more generally) would tend to increase the modeled sensitivity of ambient $PM_{2.5}$ to ammonia, we maintain that there is not a sufficient basis to conclude that higher soil NO_X emissions should be used in the air quality modeling for the SJV.[66]

In contrast to the studies just cited, Guo et al. (2020) [67] did not find such a discrepancy in emissions estimates, concluding that soil NO_X is about 1% of anthropogenic NO_X emissions. The fraction of nitrogen applied as fertilizer released as NO_X to the atmosphere was estimated by Almaraz et al. to be 15%, while seven other studies reviewed by Guo et al. estimated it to be 2% or less. Yet Almaraz et al., Sha et al., and Guo et al. all reported high agreement between their modeled and observed soil NO_X emissions. The Almaraz et al. study acknowledged the limited number of surface measurements that were available for purposes of comparing the model results and the difficulty in comparing the model results to the observations and noted the need for more field measurements. Guo et al. stated that obtaining an emission factor correlating NO_X emissions to fertilizer application from the data available in various studies (including Almaraz et al.) would be ''difficult or impossible'' due to the sparsity of data collected in terms of sampling length, sampling frequency, and the episodic nature of nitrogen gas emissions from soil.

In light of the uncertainties and disagreements among studies, the EPA does not believe that available research provides sufficient certainty about the magnitude and proportion of soil NO_X emissions attributable to agricultural fertilizer application to require substantial revisions in the NO_X emissions inventory nor the $PM_{2.5}$ modeling at this time.

In addition, as just described, multiple studies of ambient measurements show excess ammonia in the atmosphere, which is strong evidence of low sensitivity to ammonia reduction that is independent of the accuracy of estimates of precursor emissions from any source, including soil NO_X, and independent of any modeling. Thus, we disagree that the EPA ''ignored'' the supplemental soil NO_X studies; we were aware of and considered them, but they did not change our conclusion.

b. Comments Related to Scale of Potential Ammonia Emission Reductions

The 2018 $PM_{2.5}$ Plan includes modeling of 30% and 70% reductions in ammonia emissions and focuses on the results of the 30% reduction based on the assertion that the area could not achieve more than a 30% decrease in ammonia emissions. Public Justice questions the basis for the assertion that no more than 30% reductions are available. In this section, we examine, based on the submission, the $PM_{2.5}$ Precursor Guidance, and the Public Justice comment, the ammonia reductions that may be available in the SJV. Specifically, we explore the uncertainty with respect to both the current state of ammonia emissions and controls in the SJV and available research examining additional control options that may be available. We conclude that, based on the information before us, the 2018 $PM_{2.5}$ Plan does not provide sufficient support for the assertion that 30% is a reasonable upper bound on available ammonia reductions in the SJV.

The District presented its analysis of ammonia control for the primary ammonia source categories in the SJV in Appendix C, section C.25 (''Ammonia in the San Joaquin Valley'') of the 2018 $PM_{2.5}$ Plan. The EPA had reviewed this analysis for our assessment in the 2021 Proposed Rule that 30% was, for analytical purposes, a reasonable upper bound for ammonia emission reductions in the SJV, and referred to prior EPA analysis for our action on the 2006 24-hour $PM_{2.5}$ NAAQS portion of the 2018 $PM_{2.5}$ Plan.[68] In evaluating the Public Justice comments on the potential control of ammonia, however, we have re-evaluated other portions of the 2018 $PM_{2.5}$ Plan, including Appendix C, section C.25 and Appendix G,[69] and reviewed the studies cited by the commenters, as well as others from the EPA's own literature search.

As noted in the EPA's $PM_{2.5}$ Precursor Guidance,[70] and consistent with the $PM_{2.5}$ SIP Requirements Rule (40 CFR 51.1010(a)(2)(ii), 51.1006(a)(1)(ii)), the EPA may require the State to identify and evaluate potential control measures for a precursor to determine the potential emissions reductions achievable, as a part of the precursor analysis. The guidance states that this evaluation is particularly important when the $PM_{2.5}$ response to a 30% reduction in precursor emissions is close to the contribution threshold. In the case of a nonattainment area classified as Serious, this analysis would include identification and evaluation of measures that would constitute BACM/BACT level controls for such pollutant.[71]

[65] Public Justice Comment Letter, 18. Public Justice cited Almaraz et al. (2018), ''Agriculture is a major source of NO_X pollution in California,'' Science Advances, 4(1), doi:10.1126/sciadv.aao3477, 2018, available at *https://advances.sciencemag.org/content/4/1/eaao3477;* and Sha et al. (2021), ''Impacts of soil NO_X emission on O_3 air quality in rural California,'' Environmental Science & Technology, 55(10), 7113–7122, available at: doi:10.1021/acs.est.0c06834; available at *https://pubs.acs.org/doi/10.1021/acs.est.0c06834.*

[66] See also, EPA Region IX, ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS,'' June 2020, 148 and 158.

[67] Guo et al. (2020), ''Assessment of Nitrogen Oxide Emissions and San Joaquin Valley $PM_{2.5}$ Impacts From Soils in California,'' Journal of Geophysical Research: Atmospheres, 125(24), doi: 10.1029/2020JD033304; available at *https://doi.org/10.1029/2020JD033304.*

[68] 86 FR 74310, 74319. See also, 85 FR 17382, 17395 (March 27, 2020), and EPA's $PM_{2.5}$ Precursor TSD, 13.

[69] See, *e.g.,* 2018 $PM_{2.5}$ Plan, App. G, 13, where CARB states that ''CARB staff, District staff, and the public process have not identified specific controls that are technologically and economically feasible to achieve reductions at the low end of the recommended sensitivity range (*i.e.,* 30 percent), much less at the upper end of the range.''

[70] $PM_{2.5}$ Precursor Guidance, 31.

[71] The $PM_{2.5}$ Precursor Guidance provides: ''[c]onsistent with the $PM_{2.5}$ SIP Requirements Rule, the EPA may in some cases require air agencies to evaluate available emissions controls in support of a precursor demonstration that relies on a

Even when the modeled responses are below the recommended 0.2 μg/m³ contribution threshold, or when particular responses are given less weight as we have discussed above for Madera and Hanford, the outcome of a sufficiently thorough controls evaluation and its conclusions on achievable emissions reductions may be important information for the EPA to consider in deciding whether to approve the precursor demonstration. Here, the State's ammonia precursor demonstration strongly relies on the assertion that no more than 30% ammonia reductions below current levels is achievable, but there is not a sufficiently thorough controls evaluation to support that assertion. Because the 30% value has not been adequately supported, the EPA cannot evaluate whether the modeled $PM_{2.5}$ reductions associated with a 30% reduction in ammonia represent the reductions that may be possible in the SJV.

The EPA also emphasizes that the 30% control threshold is part of an analytical test to help evaluate whether the State must regulate ammonia as a precursor for the 2012 annual $PM_{2.5}$ NAAQS in the area; it does not mean that if the State cannot control 30% of ammonia with BACM/BACT-level controls that there is per se no need to regulate ammonia. For example, if control of 25% of ammonia is necessary for attainment of the $PM_{2.5}$ NAAQS, then the fact that this is below 30% is irrelevant. Our attention to the 30% threshold in this notice is to help interpret the $PM_{2.5}$ responses to modeled ammonia emissions reductions in the State's precursor demonstration, which modeled a 30% reduction. This point is important analytically because, insofar as potential ammonia reductions could be larger than 30%, the modeled responses could be larger than those relied upon in the State's precursor analysis to support its determination that ammonia is not a significant precursor.

With respect to the State's assertion that 30% is a reasonable upper bound for potential ammonia emission reductions, we agree with the commenters that the analysis of potential ammonia controls provided by the State and the evaluation of that information by the EPA lacked detailed support and is not a sufficient basis for the EPA to affirm that 30% is a reasonable upper bound for potential ammonia emission reduction in the SJV. This, in turn, affects the EPA's interpretation of the results of modeled responses to ammonia reductions. There are two general deficiencies in the submitted analysis that create uncertainty as to the potential for ammonia emission reductions, as discussed below: (1) incomplete quantification of existing ammonia emission reductions from the largest sources of ammonia; and 2) incomplete consideration and evaluation of potential additional controls of ammonia emissions for sources in the SJV. We walk through these uncertainties for each of the largest sources of ammonia in the SJV (*i.e.,* CAFs and fertilizer application).

As an initial matter, the commenters state that ''[the State] argues, and EPA agrees, that only the minimal 30 percent control level is reasonable'' despite major ammonia sources never having been regulated in the SJV and the relatively easier and cheaper sources of emission reductions relative to NO_X. We understand this reference to ''major ammonia sources'' to mean the main source categories of ammonia emissions in the SJV, including CAFs and fertilizer application, which the State estimated to emit 57% and 36%, respectively, of the annual average ammonia emissions in the SJV in 2013.[72]

We agree with the commenters that neither CARB nor the District have imposed controls specifically to regulate ammonia. We note, however, that ammonia-specific controls are not required for approval of an ammonia precursor demonstration. Moreover, although there are not ammonia-specific controls in place for the largest source categories in the SJV, many sources of ammonia are in fact regulated by District rules, such as Rule 4570 (''Confined Animal Facilities''), Rule 4565 (''Biosolids, Animal Manure, and Poultry Litter Operations''), and Rule 4566 (''Organic Material Composting Operations''), which include enforceable requirements for VOC emissions that would, in general, achieve some degree of ammonia emission reductions. We agree with the general assertion, presented by the District in section C–25 (''Ammonia in the San Joaquin Valley'') of Appendix C of the 2018 $PM_{2.5}$ Plan, that some management practices to reduce VOCs in those rules also collaterally reduce ammonia emissions by limiting ammonia formation and volatilization, even though ammonia reductions are not legally required by these measures.[73]

Although we expect that existing VOC regulations are achieving a degree of ammonia control, there are multiple reasons why it is not clear, based on the record before us, how much reduction is being achieved, and thus how much additional reduction may be available. For example, regarding CAFs, as the EPA has previously noted,[74] the State has not sufficiently substantiated its calculation of 100 tpd of ammonia emission reductions attributed to Rule 4570. In the 2018 $PM_{2.5}$ Plan, the State referenced an outdated analysis from 2006 that relied on a different baseline emissions inventory, but has not supplemented this analysis, or reconciled it with more recent emissions inventory data.[75] We note that CARB has provided the EPA with significantly lower estimates of ammonia emission reductions achieved by SJVUAPCD Rule 4570 based on more recent calculations of reductions from a 2012 baseline emissions inventory.[76] The 2018 $PM_{2.5}$ Plan does not reconcile these differences, nor update the emission reduction estimate from the 2006-era analysis to the emissions inventory basis of the 2018 $PM_{2.5}$ Plan.

sensitivity analysis. [See 40 CFR 51.1009(a)(2) and 51.1010(a)(2).] It is particularly important for states to evaluate available controls where the recommended contribution threshold—that is, the threshold used for identifying an impact that is 'insignificant'—is close to being exceeded at the low end of the recommended sensitivity range (*e.g.,* 30 percent). In these cases, the EPA may determine that to sufficiently evaluate whether the area is sensitive to reductions, the State must determine the potential precursor emission reductions achievable through the implementation of available and reasonable controls for a Moderate area (or best controls for a Serious area).'' $PM_{2.5}$ Precursor Guidance at 31.

[72] See Public Justice Comment Letter, 6, citing EPA Region IX, ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS.''

[73] See, *e.g.,* 2018 $PM_{2.5}$ Plan, App. C, C–313 (for CAFs). The lack of controls specifically regulating *ammonia emissions* from the largest source categories through enforceable SIP requirements in the SJV is not an inherent deficiency of the precursor demonstration, but it does result in challenges for determining the potential for ammonia emission controls (*i.e.,* in determining the reductions that have already been achieved, and what additional reductions are available).

[74] 81 FR 69396, 69397–69398 (October 6, 2016).

[75] 2018 $PM_{2.5}$ Plan, App. C, C–311 to C–339 and SJVUAPCD, ''Final Draft Staff Report, Proposed Re-Adoption of Rule 4570 (Confined Animal Facilities),'' June 18, 2009, at Appendix F, ''Ammonia Reductions Analysis for Proposed Rule 4570 (Confined Animal Facilities),'' June 15, 2006 (discussing various assumptions underlying the District's calculation of ammonia emission factors without identifying relevant emissions inventories).

[76] Email dated September 3, 2015, from Gabe Ruiz, CARB, to Larry Biland and Andrew Steckel, EPA Region IX, regarding ''SJV Livestock Ammonia Emissions with and without Rule 4570.'' This email notes that 2011 ammonia emissions (pre-rule) were 316.8 tpd, 2012 emissions (without rule) were 323.8 tpd, and 2012 emissions (with rule) were 250.9 tpd. Thus, application of Rule 4570 would have achieved either 72.9 tpd of ammonia reductions, measured within 2012 with and without the rule, or 65.9 tpd, measured from the 2011 level (without rule) to the 2012 level (with rule).

In short, although we agree that some existing VOC controls will also result in ammonia reductions, a more detailed analysis it required to determine both the effectiveness of existing controls, and the additional controls that may be available. In the following, the EPA notes various uncertainties concerning ammonia emissions and in the amount of reductions achieved by specific rules as a byproduct of the existing VOC control measures. For a number of key source categories, ammonia measures require additional analysis to evaluate their potential to achieve additional emissions reductions, in part based on research studies included as exhibits to the Public Justice Comment Letter.

For CAFs, the District discusses in detail how Rule 4570 is structured (*e.g.,* to address varying types of CAFs); the five main CAF operations/emission sources: feeding, housing (including distinctions for housing configurations), solid waste, liquid waste, and land application of manure; the control menu requirements for each of those five operations; and research papers that estimate ammonia emission reductions from some of the measures.[77] However, the 2018 $PM_{2.5}$ Plan does not specify, even in an aggregated form, which control measures were selected by CAFs in their permits-to-operate with the District for each of the five operations and the scale of those selections by CAF size, nor does it quantify the emission reductions from those selections and scales. Thus it is unclear what level of ammonia control is being achieved, and, importantly for the precursor demonstration, unclear what level of further ammonia control may be possible. This uncertainty is increased by several provisions in Rule 4570 that allow CAF owners/operators to implement ''alternative mitigation measures'' [78] *in lieu of* the mitigation measures listed in the rule, without any requirement to ensure that such alternative mitigation measures achieve any particular level of ammonia emission reductions, or any ammonia reductions at all.[79]

Furthermore, for certain requirements, the 2018 $PM_{2.5}$ Plan assumes that a less effective control measure may be implemented given that the more effective control measure may be more costly. For instance, the District describes some research studies that relate to one or more of the options, but it is not clear whether and how the requirements of each option align with the practices evaluated in each study. The District cites a 2005 University of California study that manure from lagoons, diluted with irrigation water, and applied via surface gravity irrigation systems (*e.g.,* not applied with a drag hose or similar apparatus) commonly minimized ammonia losses from volatilization to the air to 10% or less.[80] However, it is not clear how the requirements of option H.2.a (liquid manure treated in an aerobic or anaerobic lagoon) or option H.2.b (24-hour limit for liquid manure standing on fields) may correspond to the study, whether any particular level of lagoon treatment or dilution prior to application would be needed, nor whether a combination of the two would be required to minimize ammonia losses to air to that degree.

For option H.2.c, the District states that use of a drag hose or similar apparatus could significantly reduce ammonia emissions, but without specifying how much or pointing to any supporting document, and only qualitatively asserting a relatively higher cost for using such equipment, and its limitations when a crop is growing.[81] The District states that ''[a]pplication of liquid or slurry manure with a drag hose or similar apparatus could result in significant [ammonia] reductions, but has higher costs compared to flood or furrow irrigation of liquid manure.'' [82] However, higher cost does not necessarily translate to the measure being economically infeasible, and thus the option to use flood or furrow irrigation alone may not represent the most appropriate method or level of control of ammonia for the land application of liquid manure. As a result, the District has not demonstrated that additional reductions are not feasible.

The District assumes that all dairies and other cattle facilities would select option H.2.b (24-hour limit for liquid manure standing on fields) and cites two studies that suggest substantial ammonia emission reductions from this limitation, assuming no ammonia emissions into the air after soil incorporation.[83] Based on one study, dairy CAF operations in the SJV would have hypothetically already reduced ammonia emissions to the air from land application of liquid manure from 66% ammonium nitrogen to 25% ammonium nitrogen by implementing option H.2.b (a 41% absolute reduction, or 62% relative reduction). Uncertainty about the options that are being chosen and implemented by regulated entities gives rise to uncertainty in the ammonia emission reductions that are being achieved. The permits-to-operate submitted by each dairy CAF are required to indicate which option has been selected.[84] Accordingly these permits, and associated compliance records, should contain information that would help to address this uncertainty. Furthermore, if injection via drag hose or similar apparatus (option H.2.c) is economically feasible, even if more expensive, implementation of such a measure could further reduce ammonia by 25% based on the same study, at least for a portion of the operating cycle (*e.g.,* when crops are not growing). Lastly, a combination of measures (*e.g.,* requiring that liquid manure be both treated in an anaerobic lagoon, aerobic lagoon, or digester, and that it be incorporated into the soil within 24 hours) or adjustment to existing options (*e.g.,* requiring incorporation of liquid manure within 6 hours, rather than 24 hours, and during cooler hours when ammonia volatilization is less) could hypothetically reduce ammonia emissions at these sources by more than 30%.[85]

In general, with respect to dairy CAFs, on a qualitative basis CAF operators have likely reduced ammonia emissions

[77] 2018 $PM_{2.5}$ Plan, App. C, C–312 to C–323.

[78] ''Alternative Mitigation Measure'' is defined in SJVUAPCD Rule 4570 as ''a mitigation measure that is determined by the APCO, [CARB], and EPA to achieve reductions that are equal to or exceed the reductions that would be achieved by other mitigation measures listed in this rule that owners/operators could choose to comply with rule requirements.'' SJVUAPCD Rule 4570 (amended October 21, 2010), section 3.4. Because SJVUAPCD Rule 4570 explicitly applies only to VOC emissions, the requirement for equivalent ''reductions'' in section 3.4 applies only to VOC emission reductions and does not apply to ammonia emission reductions.

[79] See, *e.g.,* SJVUAPCD Rule 4570 (amended October 21, 2010) at section 5.6, Table 4.1.F.

[80] University of California, Division of Agricultural and Natural Resources, Committee of Experts on Dairy Manure Management, ''Managing Dairy Manure in the Central Valley of California,'' June 2005.

[81] 2018 $PM_{2.5}$ Plan, App. C, C–323, referring to a 2008 report by Alberta Agriculture and Food (Canada). Albert Agriculture and Food, ''Ammonia Volatilization from Manure Application,'' February 2008 (''2008 Alberta Report''). That report estimates that injection into soil would reduce the average ammonium-nitrogen fraction loss (*i.e.,* to air) to 0% compared to incorporation within one day from surface application (25%) or compared to surface application with no incorporation (66%). 2008 Alberta Report, Table 2.

[82] 2018 $PM_{2.5}$ Plan, App. C, C–322 to C–323.

[83] 2018 $PM_{2.5}$ Plan, App. C, C–323, referring to two studies: the 2008 Alberta Report, and Chadwick et al. ''Emissions of Ammonia, Nitrous Oxide and Methane from Cattle Manure Heaps: Effect of Compaction and Covering,'' Atmosphere Environment, 39: 787–799 (2005); available at: *http://www.sciencedirect.com/science/article/pii/S135223100400994X.*

[84] Under District Rule 4570, section 5.1, owners/operators of CAFs subject to the rule must obtain a permit-to-operate for the facility, and that permit must include a facility emission mitigation plan, a facility emission inventory, and identify the mitigation measures selected for the facility.

[85] 2008 Alberta Report.

to a degree consistent with the options selected. However, there is not a quantitative basis to specify the degree and potential for further reduction. For some of the options within the menu of mitigation measures for each type of CAF in Rule 4570, there are research studies to support the basis of existing ammonia emission reductions. The generalized assumptions used by the State could be evaluated by an analysis of the options selected by CAFs in permits-to-operate with the District. Further assessment of available compliance records and examination of combinations of measures or adjustments to existing measures could help quantify additional potential ammonia emission reductions.

In addition, Public Justice cites several studies to support its assertion that reductions in agricultural ammonia emissions may be achieved through ''strategies such as improving livestock feed to reduce excreted nutrients, altering manure storage and handling practices to prevent [ammonia] emissions, and improving synthetic fertilizer use efficiency,'' and cites several studies to support this assertion.[86] The EPA considers these approaches to warrant examination as potential means to reduce ammonia and believes that more information regarding their efficacy as control measures and their economic and technical feasibility is needed to determine the amount of the potential additional ammonia control in the SJV.

For livestock feed, studies in 2005 and 2006 cited by the commenter found that ''decreasing the crude protein concentration of beef cattle finishing diets based upon steam-flaked corn from 13 to 11.5 percent decreased ammonia emissions by 30 to 44 percent.'' [87] A 2009 study cited by the commenter found that ''one feedyard feeding distillers grains averaged 149 grams of ammonia-N per head per day (NH3–N/head/day) over nine months, compared with 82 g NH3–N/head/day at another feedyard feeding lower protein steam-flaked, corn-based diets.'' [88] Nominally this would represent a 45% reduction in ammonia emissions from manure by going to a lower protein diet. However, the net ammonia emission reduction either from reducing crude protein levels in feed, or by providing a lower protein steam-flaked, corn-based diet rather than a distiller grain diet is unclear given the role of protein intake on the time for beef cattle to reach market weight or on milk production for dairy cattle.

For manure handling and storage practices, a 2011 inventory of mitigation methods by Price et al. identifies many mitigation methods for various kinds of CAFs, some of which may reduce ammonia emissions by 50–90%.[89] For example, Method 44 (''Washing down dairy cow collecting yards'') involves areas where dairy cows are collected on a concrete yard prior to milking and, after each milking event, the urine and manure in the area are removed by pressure washing or by hosing and brushing, resulting in up to 90% ammonia emission reductions. Method 62 (''Cover solid manure stores with sheeting'') involves covering solid manure heaps with plastic sheeting, resulting in ammonia emission reductions up to 90%.[90] However, the authors note that, for both Method 44 and Method 62, reducing ammonia emission from the milking areas would increase the ammonium content of the slurry, potentially leading to higher ammonia emissions during storage and spreading, but by a lower amount than the initial reduction amount. Method 71 (''Use slurry injection application techniques'') involves shallow (5–10 cm depth) or deep (25 cm depth) injection of slurry into the soil, resulting in ammonia emission reductions of 70% to 90%, respectively.

Mitigation methods are also described for other kinds of CAFs, such as pig farms and chicken farms. For example, Method 48 (''Install air-scrubbers or biotrickling filters to mechanically ventilated pig housing'') involves pig housing where specific technologies are used to capture up to 90% of the ammonia emissions into recirculation water that can then be used as a nitrogen-based fertilizer. Method 51 (''In-house poultry manure drying'') involves installation of ventilation/drying systems that reduce the moisture content of poultry litter, resulting in up to 50% ammonia emission reductions, though, as with the cattle examples, this could result in some increased emissions at subsequent steps (*e.g.,* storing poultry litter).

In addition to the 2011 inventory of mitigation methods, in September 2017, the EPA and the U.S. Department of Agriculture, Natural Resource Conservation Service released the ''Agricultural Air Quality Conservation Measures, Reference Guide for Poultry and Livestock Production Systems'' (2017 EPA–USDA Reference Guide). This reference guide discusses air quality conservation measures relating to nutrition and feed management, animal confinement, manure management, land application, and other supplemental practices. Among other things it includes Appendix A.1 (''Table of Mitigation Effectiveness for Selected Measures''), which lists 12 measures that may reduce ammonia emissions by more than 30%, Appendix A.2 (''List of State Programs and Regulations for AFO Air Emissions''), and Appendix A.3 (''List of AFO Air Quality Programs & Land-Grant Universities'').

In sum, various research studies on mitigating ammonia emissions from CAFs suggest that there may be potential for additional ammonia reductions from activities such as animal feeding and housing to manure storage, handling, and land application. While the Plan refers to and describes some of the research studies described herein (*e.g.,* the 2008 Alberta Report and the 2005 Chadwick paper), it is unclear the extent to which the higher emission reduction measures have been or could be implemented in the SJV and, when aggregated across all CAF operations, it remains unclear whether the total reduction from additional measures would be greater than the State's estimate of maximum available

[86] Public Justice Comment Letter, 16–18.

[87] Public Justice Comment Letter, Exhibit 36, 9. Exhibit 36 is: Preece, Sharon L.M. et al., ''Ammonia Emissions from Cattle Feeding Operations,'' Texas A&M AgriLife Extension Service, referring to Cole, N.A., R.N. Clark, R.W. Todd, C.R. Richardson, A. Gueye, L.W. Greene, and K. McBride, ''Influence of Dietary Crude Protein Concentration and Source on Potential Ammonia Emissions from Beef Cattle Manure,'' Journal of Animal Science 83:(3), 722 (2005); and Todd, R.W., N.A. Cole, and R.N. Clark, ''Reducing Crude Protein in Beef Cattle Diet Reduces Ammonia Emissions from Artificial Feedyard Surfaces.'' Journal of Environmental Quality. 35:(2), 404–411 (2006).

[88] Public Justice Exhibit 36, 10, referring to a study by Todd, R.W., N.A. Cole, D.B. Parker, M. Rhoades, and K. Casey. 2009. ''Effect of Feeding Distillers Grains on Dietary Crude Protein and Ammonia Emissions from Beef Cattle Feedyards.'' In Proceedings of the Texas Animal Manure Management Issues Conference, 83–90.

[89] Public Justice Comment Letter, Exhibit 39. Exhibit 39 is: Price et al., ''An Inventory of Mitigation Methods and Guide to their Effects on Diffuse Water Pollution, Greenhouse Gas Emissions and Ammonia Emissions from Agriculture, User Guide,'' December 2011. For mitigation measures that may reduce ammonia emissions by 50–90%, for example, methods 43, 44, 47–51, 54–55, 62, 64, 70–71, and 73–74 on pages 70–71, 74–78, 81–84, 93–94, 105–108, and 110–112 respectively, achievable control efficiencies from these measures in the SJV would depend on an applicability and feasibility review.

[90] We note that District Rule 4570, Table 3.1, section F and Table 4.1, section F provide mitigation measure options for the storage of solid manure and separated solids from large dairy CAFs, including measures that involve covering dry manure piles and separated solids, respectively, outside of pens with a weatherproof covering from May through October. Thus, such mitigation measures, if selected, would not be required for the remaining four months of the year (June through September). Similar mitigation measure options in Rule 4570 for covering dry manure piles apply for beef feedlots, other cattle, swine, poultry, and other CAF types.

reductions.[91] Accordingly, the EPA concludes that the available information in the Plan is insufficient to conclude that the State has sufficiently examined and justified its estimate for the ammonia emission reductions that may be available from CAFs, which emit a majority of the ammonia in the SJV.

Regarding fertilizer application, Rule 4570 and Rule 4565 have provisions addressing the land application of manure from CAFs and of biosolids, animal manure, and poultry litter from composting operations (though these lack specific enforceable requirements for ammonia). However, more broadly, the District states that fertilizer application is the second largest ammonia source in the SJV and that the District does not have statutory authority to regulate such activities.[92] Notwithstanding this statement, the District describes key research assessing nitrogen in California, as well as regulations adopted by the California Water Resources Control Board, including orders adopted by the Central Valley Regional Water Quality Control Board (*e.g.,* a Nutrient Management Plan), the Irrigated Lands Regulatory Program (*e.g.,* a Nitrogen Management Plan), or other individual mechanisms.[93] These orders subject agricultural operators, including dairies, bovine feedlots, poultry operations, and crop farmers to ''waste discharge requirements that protect both surface water and groundwater.'' [94]

The EPA anticipates that such regulations are, in practice, likely to enhance the retention of nitrogen (whether from manure or nitrogen-based chemical fertilizers) for productive purposes in the SJV (*e.g.,* growing crops and enhancing soil health) and limit the loss of nitrogen as pollution to water and air (*e.g.,* potentially reduce ammonia emissions). However, to our knowledge, these regulations do not impose any enforceable requirement for ammonia emissions to the air, and thus render quantification difficult, as with Rule 4570.[95]

In addition, the District states that ''the overall efficiency of nitrogen usage at California farms is expected to increase and emissions of reactive nitrogen, including [ammonia], are expected to decrease significantly.'' We agree that managing the amount of nitrogen applied to the environment should reduce the potential for pollution to air, water, and land. However, the District does not attempt to quantify or otherwise substantiate the scale and timing of such potential ammonia emission reduction benefits, nor their enforceability, nor does it attempt to analyze how much additional reductions may be available. Overall, the EPA finds that the available evidence is insufficient to conclude that the State has sufficiently examined and justified its estimate for the ammonia emission reductions that may be available from fertilizer application, the second largest ammonia emission source in the SJV.

c. The EPA's Conclusion for Ammonia Precursor Demonstration

The EPA does not believe that the State has presented sufficient evidence that ammonia does not contribute significantly to $PM_{2.5}$ levels above the NAAQS. In the absence of an approved precursor demonstration, ammonia remains a plan precursor subject to the requirements of BACM, BACT, and additional feasible measures.

As discussed in our 2021 Proposed Rule,[96] the modeled response to 30% ammonia emissions reductions is above the EPA's recommended contribution threshold of 0.20 μg/m³ at two monitoring sites, Madera and Hanford, providing evidence that ammonia significantly contributes to $PM_{2.5}$ in SJV. In the previous proposal, we gave those responses less weight, because of specific evidence available for these sites that the responses were overestimated. For Madera, the monitoring data used in estimating the model response are biased high, and therefore the modeled response of 0.21 μg/m³, just above contribution threshold, is likely overestimated. For Hanford, several analyses showed ambient ammonia concentrations are underestimated, and so we believe that the modeled response of 0.26 μg/m³ is likely overestimated. Supporting that conclusion is the evidence from ambient concentrations of excess ammonia relative to nitrate, which suggest that $PM_{2.5}$ responses to reductions of ammonia emissions would be dampened by the NO_X-limited nature of ammonium nitrate formation in the SJV.

All of those considerations remain for the current proposal. But in light of comments received and re-evaluation of the available evidence, the EPA believes we should give the Hanford response more weight, because that response would be larger if the ammonia reductions modeled were larger than the 30% assumed in the State's precursor demonstration. The previous subsection gave several examples of the uncertainty and possible underestimation of the ammonia benefit of available control measures to the SJV. The EPA does not believe there is sufficient quantitative evidence to rely on 30% as the amount of achievable reductions, and as the amount to use an upper bound on the ammonia emission reductions modeled in the State's precursor demonstration. A robust controls evaluation could show that a larger amount of reductions is achievable. If it is, then not only would the Hanford modeled response be larger, but additional monitoring sites could have a modeled response above the contribution threshold.

For example, with respect to the modeled 2024 ambient $PM_{2.5}$ responses to a 70% emission reduction, we note that the modeled high site of Bakersfield-Planz would have a response of 0.36 μg/m³, the site with the largest modeled response would be 0.75 μg/m³ at Hanford, and six sites (including Hanford) would have modeled responses greater than 0.5 μg/m³. As a more modest example, interpolating between the available 30% and 70% modeled results, if 32% reductions are achievable, then three additional monitoring sites (Turlock, Merced-S. Coffee St., and Modesto) would reach the 0.2 μg/m³ contribution threshold. The uncertainty over the ammonia response means that we cannot rely on 30% as an upper bound for ammonia emission reductions, and so the weight of evidence shifts relative to that in the 2021 Proposed Rule.

The discussion in this proposed rule, and the heavy reliance in the 2021 Proposed Rule, on the State's use of a 30% upper bound for potential reduction from controls should not be interpreted as establishing a 30% ''bright line'' for deciding whether a precursor should be regulated. The $PM_{2.5}$ Precursor Guidance recommends that 30% to 70% emissions reductions be modeled as a way of implementing the $PM_{2.5}$ SIP Requirements Rule's option in 40 CFR 51.1006(a)(1)(ii) for a State to assess the sensitivity of the atmospheric $PM_{2.5}$ to precursor emission reductions. The sensitivity of the atmosphere to reductions is a separate question from what reductions are achievable from controls; the latter is properly part of the control evaluation for BACM, BACT, and additional feasible measures. However, it is important to note that under 40 CFR

[91] In evaluating the aggregate reductions available across all sub-activities, it may be important to evaluate the extent to which reductions at one sub-activity may affect emissions at other stages of the process.

[92] 2018 $PM_{2.5}$ Plan, App. C, C–311.

[93] 2018 $PM_{2.5}$ Plan, App. C, C–339 to C–343.

[94] Id. at C–341.

[95] Unlike Rule 4570, which has been approved into the California SIP to limit VOC emissions, the State's water-related regulations on fertilizer application have not been submitted for approval into the California SIP.

[96] 86 FR 74310, 74320.

51.1010(a)(2)(ii), the EPA may require a control evaluation to help the EPA evaluate the precursor demonstration. The $PM_{2.5}$ Precursor Guidance explains that the additional information from a control evaluation is particularly important when modeled precursor contributions are close to the threshold for a 30% reduction.[97] But the regulations and guidance do not establish an automatic ''off ramp'' for a State to be discharged from the requirements for BACM, BACT, and additional feasible measures via a showing that achievable reductions are below a particular percentage.

We have no evidence that emission reductions below current emissions levels from BACM on all ammonia sources in the SJV would be as large as 70%, but the lack of a developed record showing what ammonia control measures are feasible and what they could achieve makes it harder for the EPA to assess this point. We also lack sufficient evidence to conclude that reasonable ammonia control measures could achieve no more than 30% reductions, and so cannot rely on that supposition in weighing the modeled responses to reductions and other evidence. Better quantification of the possible ammonia reductions from current levels that could result from additional controls would help resolve this issue. Reconciliation of modeled sensitivity with that expected from ambient studies would also be appropriate.

The EPA has re-examined the 2024 sensitivity analyses to both 30% and 70% ammonia emission reductions in light of the uncertainty that 30% represents a reasonable upper bound for potential ammonia emission reductions. We note that the State modeled 30% reduction scenarios and predicted ambient $PM_{2.5}$ responses above 0.2 μg/m^3 at 2 of 15 sites in 2024; and modeled the 70% reduction scenarios and predicted responses above 0.2 μg/m^3 at all monitors in 2024.[98] The EPA maintains that the State's reliance on its sensitivity-based contribution analysis for a future year (2024) to evaluate the significance of ammonia as a precursor is reasonable, well supported, and consistent with the EPA's guidance. There are also good reasons for giving less weight to the modeled responses at the Madera and Hanford sites, although those are tempered by the consideration that there is not good support for limiting the modeled ammonia reductions to 30%, leading to the possibility of larger responses at Hanford and of additional sites with responses above the contribution threshold.

The weight of the evidence, including at least one site above the EPA's recommended contribution threshold and the possibility of additional ones depending on the unknown amount of reductions achievable, favor retaining the presumption that ammonia must be regulated as a $PM_{2.5}$ precursor for the 2012 annual $PM_{2.5}$ NAAQS in the SJV. For the reasons explained above, the Plan both indicates that there are levels of ammonia control that could have a significant impact on $PM_{2.5}$ levels at multiple monitors in the SJV and does not dispose the potential availability of ammonia emission reductions at a level that would have such impacts. Therefore, the EPA proposes to disapprove the State's ammonia precursor demonstration for the Serious area requirements for purposes of the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

B. Best Available Control Measures

1. Statutory and Regulatory Requirements

Section 189(b)(1)(B) of the Act requires for any Serious $PM_{2.5}$ nonattainment area that the State submit provisions to assure that the best available control measures (BACM), including controls that reflect best available control technology (BACT), for the control of $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the date the area is reclassified as a Serious area. The EPA has defined BACM in the $PM_{2.5}$ SIP Requirements Rule to mean ''any technologically and economically feasible control measure that can be implemented in whole or in part within 4 years after the date of reclassification of a Moderate $PM_{2.5}$ nonattainment area to Serious and that generally can achieve greater permanent and enforceable emissions reductions in direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from sources in the area than can be achieved through the implementation of reasonably available control measures (RACM) on the same source(s).''[99]

The EPA generally considers BACM a control level that goes beyond existing RACM-level controls, for example by expanding the use of RACM controls or by requiring preventative measures instead of remediation.[100] Indeed, because states are required to implement BACM and BACT when a Moderate nonattainment area is reclassified as Serious due to its inability to attain the NAAQS through implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more technologically advanced or more costly level of control.[101] If RACM and RACT level controls of emissions have been insufficient to reach attainment, then the CAA Title I, Part D, subpart 4 provisions for $PM_{2.5}$ nonattainment plans contemplate the implementation of more stringent controls, controls on more sources, or other adjustments to the control strategy necessary to attain the NAAQS in the area. Thus, BACM/BACT determinations are to be ''generally independent'' of attainment for purposes of implementing the $PM_{2.5}$ NAAQS.[102]

Consistent with longstanding guidance provided in the General Preamble Addendum, the preamble to the $PM_{2.5}$ SIP Requirements Rule discusses the following steps for states to use in identifying and selecting the emission controls needed to meet the BACM/BACT requirements of 40 CFR 51.1010:

1. Develop a comprehensive emission inventory of all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors from major and non-major stationary point sources, area sources, and mobile sources;

2. Identify potential control measures for all sources or source categories of emissions of $PM_{2.5}$ and relevant $PM_{2.5}$ plan precursors;

3. Determine whether an available control measure or technology is technologically feasible;

4. Determine whether an available control measure or technology is economically feasible; and

5. Determine the earliest date by which a control measure or technology can be implemented in whole or in part.[103]

The EPA allows states to consider factors such as a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements when

[97] $PM_{2.5}$ Precursor Guidance, 31.

[98] 2018 $PM_{2.5}$ Plan, App. G, tables 4 through 7.

[99] 40 CFR 51.1000 (definitions). In longstanding guidance, the EPA has similarly defined BACM to mean, ''among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts.'' General Preamble Addendum, 42010, 42013.

[100] 81 FR 58010, 58081 and General Preamble Addendum, 42011, 42013.

[101] 81 FR 58010, 58081 and General Preamble Addendum, 42009–42010.

[102] $PM_{2.5}$ SIP Requirements Rule, 58081–58082. See also, General Preamble Addendum, 42011.

[103] 81 FR 58010, 58083–58085.

considering technological feasibility.[104] For purposes of evaluating economic feasibility, the EPA allows states to consider factors such as the capital costs, operating and maintenance costs, and cost effectiveness (*i.e.,* cost per ton of pollutant reduced by a measure or technology) associated with the measure or control.[105] For any potential control measure identified through the process described above that is eliminated from consideration, states are required to provide detailed written justification for doing so on the basis of technological or economic feasibility, including how its criteria for determining such feasibility are more stringent than those used for determining RACM/RACT.[106]

Once these analyses are complete, the State must use this information to develop enforceable control measures for all relevant source categories in the nonattainment area and submit them to the EPA for evaluation as SIP provisions to meet the basic requirements of CAA section 110 and any other applicable substantive provisions of the Act.

2. BACM for Ammonia Sources

As previously noted, as part of the EPA's 2021 Proposed Rule, we reviewed the State's analysis of ammonia control for the primary source categories of ammonia in the context of our evaluation of the State's precursor demonstration.[107] Because our prior proposal to approve the State's ammonia precursor demonstration would have relieved the State of its obligation to implement BACM for ammonia sources, we did not present a summary of the 2018 $PM_{2.5}$ Plan with respect to the BACM requirements for ammonia for the 2012 annual $PM_{2.5}$ NAAQS, nor our evaluation thereof. Given our reconsidered proposal to disapprove the State's ammonia precursor demonstration, in the following sections of this proposed rule we evaluate the District's control analysis for the two most substantial source categories of ammonia, which together sum to more than 90% of the emissions in the SJV: CAFs and fertilizer application.

a. Summary of State's Submission

The District presents its analysis of ammonia controls for the primary ammonia source categories in the SJV in Appendix C, section C.25 (''Ammonia in the San Joaquin Valley'') of the 2018 $PM_{2.5}$ Plan. The District evaluated its emission control measures for compliance with BACM for CAFs and described water-related measures applicable to fertilizer application that have co-benefits to air quality. The District presents its reasoning that measures that control VOC emissions, such as Rule 4570 for CAFs, also reduce ammonia emissions due to the physical processes occurring in decomposing manure and subsequent volatilization of decomposition products (like VOC and ammonia). As part of its process for identifying candidate BACM, considering the technical and economic feasibility of additional control measures, the District reviewed the EPA's guidance documents on BACM, and control measures implemented in other nonattainment areas in California and other states.[108]

For CAFs, the District discusses in detail how Rule 4570 (''Confined Animal Facilities'') is structured (*e.g.,* to address varying types of CAFs, including applicability thresholds); the five main CAF operations/emission sources: feeding, housing (including distinctions for housing configurations), solid waste, liquid waste, and land application of manure; and the control menu requirements for each of those five operations.[109] The District summarizes the specific requirements applicable to each type of cattle-based CAF, including dairies, beef feedlots, and ''other cattle'' and describes its basis for ammonia emission reductions estimates, including cited research papers.

The District also compares Rule 4570 to other CAF rules imposed by the South Coast Air Quality Management District (AQMD), Bay Area AQMD, Sacramento Metropolitan AQMD, Imperial County Air Pollution Control District (APCD), and the State of Idaho.[110] The District evaluates a potential additional control measure—application of sodium bisulfate to reduce pH and bacterial levels in bedding for dairy cattle—and concludes that such measure is not feasible based on a number of factors, including health and safety of dairy workers and animals, impacts on water quality, and overall cost and effectiveness.[111]

For fertilizer application, as described in section II.A.3 of this proposed rule, the District states that fertilizer application is the second largest ammonia source in the SJV and that the District does not have statutory authority to regulate such activities.[112] Notwithstanding, the District describes how regulations adopted by the California Water Resources Control Board, including orders adopted by the Central Valley Regional Water Quality Control Board (*e.g.,* a Nutrient Management Plan), the Irrigated Lands Regulatory Program (*e.g.,* a Nitrogen Management Plan), or other individual mechanisms [113] subject agricultural operators, including dairies, bovine feedlots, poultry operations, and crop farmers to ''waste discharge requirements that protect both surface water and groundwater.'' [114]

Overall, the District concludes that ''the Valley's ammonia emissions have been significantly reduced through stringent regulations, that additional ammonia control measures are infeasible, and that Valley sources are already implementing BACM.'' [115]

b. Summary of Adverse Comments

Public Justice states that ''[w]eaker controls are consistently allowed for agricultural sources,'' including an ''expansive menu of control options'' in Rule 4570, that they assert provide little to no emission reduction benefit.[116] More broadly, as described in section II.A.2 of this proposed rule, the commenters assert that ''[t]he analysis of potential controls is particular[ly] weak and ignores the wealth of literature demonstrating that strategies for reducing ammonia emissions from agriculture . . . are among the most effective for also reducing PM concentrations,'' and cite several studies in support of this argument.[117] The commenters further state that reducing ammonia emissions may be achieved through ''strategies such as improving livestock feed to reduce excreted nutrients, altering manure storage and handling practices to prevent [ammonia] emissions, and improving synthetic fertilizer use efficiency,'' again citing numerous studies.[118] The commenters

[104] 40 CFR 51.1010(a)(3)(i).

[105] 40 CFR 51.1010(a)(3)(ii).

[106] 40 CFR 51.1010(a)(3)(iii).

[107] 86 FR 74310, 74319. See also, 85 FR 17382, 17395 (March 27, 2020), and the EPA's $PM_{2.5}$ Precursor TSD, 13.

[108] 2018 $PM_{2.5}$ Plan, Chapter 4, section 4.3.1.

[109] 2018 $PM_{2.5}$ Plan, App. C, C–312 to C–323.

[110] 2018 $PM_{2.5}$ Plan, App. C, C–323 to C–337.

[111] 2018 $PM_{2.5}$ Plan, App. C, C–338 to C–339.

[112] 2018 $PM_{2.5}$ Plan, App. C, C–311.

[113] 2018 $PM_{2.5}$ Plan, App. C, C–339 to C–343.

[114] 2018 $PM_{2.5}$ Plan, App. C, C–341.

[115] 2018 $PM_{2.5}$ Plan, App C., C–312.

[116] Public Justice Comment Letter, 20.

[117] Public Justice Comment Letter, 16, Exhibits 31 through 34.

[118] Public Justice Comment Letter, 17, Exhibits 35 through 40 and three additional studies: N. Cole, et al., ''Influence of dietary crude protein concentration and source on potential ammonia emissions from beef cattle manure,'' J. Anim. Sci. 83, 722, 2005; N. Cole, P. Defoor, M. Galyean, G. Duff, J. Gleghorn, ''Effects of phase-feeding of crude protein on performance, carcass characteristics, serum urea nitrogen concentrations, and manure nitrogen of finishing beef steers,'' J. Anim. Sci. 12, 3421–3432, 2006; and R. Todd, N. Cole, R. Clark, ''Reducing crude protein in beef cattle diet reduces

argue that the EPA ''should reject the plan's BACM analysis for failing to justify these weaker controls, and for being inconsistent with the Title VI prohibition against policies and practices that inflict disparate impacts.''

c. The EPA's Reconsidered Proposal

As a result of our proposed conclusion that ammonia remains a regulated precursor for the 2012 annual $PM_{2.5}$ NAAQS in the SJV, the EPA has evaluated potential ammonia emissions control measures for the two most substantial source categories in the SJV and evaluated whether the State has implemented ammonia controls with a BACM/BACT level of stringency. Thus, the EPA has also evaluated the existing control measures that the State claims are BACM for two of the main sources of ammonia in the area, including confined animal facilities (CAFs) and fertilizer application.[119] As discussed below, we conclude that the SJV has not established that it has enforceable requirements in the SIP that meet a BACM level of stringency to reduce ammonia emissions from these two categories. Therefore, we propose to disapprove BACM for ammonia sources in the SJV.

Our basis for proposing to disapprove BACM for ammonia sources flows from the controls analysis we have reviewed and discuss in section II.A.3 of this proposed rule. We agree with the commenters that the analysis of potential controls in the 2018 $PM_{2.5}$ Plan was weak in two general areas: (1) incomplete quantification of existing ammonia emission reductions, and (2) lack of consideration of potential ammonia control measures identified in research studies. In that section we describe the Plan's weaknesses with respect to quantifying emission reductions and rely on that description for purposes of evaluating BACM.

Similarly, in section II.A.3, we discuss additional options for ammonia control that we will not reiterate here. Based on our review of the additional research studies cited by the commenters with respect to CAFs, measures such as those for adjusting the protein content of livestock feed (*e.g.,* reducing the portion of beef cattle finishing diets by 1.5% steam-flaked corn), manure handling and storage (*e.g.,* washing dairy cow collecting yards after each milking event, covering solid manure stores with sheeting), and land application of slurry (*e.g.,* injection application techniques), it appears that additional measures may be available to evaluate. Absent a thorough and more current evaluation of technological and economic feasibility of potential measures as applied in the SJV, we propose to find that the State has not demonstrated whether or how additional measures (*e.g.,* in the form of existing options that could also be feasibly implemented, or new options that may lead to increased reductions) may have been evaluated, implemented (even partially) by the existing rules, or set aside for reasons of technological feasibility or economic feasibility, consistent with the BACM requirements.

For fertilizer application, as discussed in section II.A.3 of this proposed rule, the District indicates that it does not have authority to regulate ammonia emissions from fertilizer application. Regardless of which State entity, as a matter of State law, has authority over this class of activities, CAA section 189(b)(1) requires that the State include provisions to ensure implementation of BACM for direct $PM_{2.5}$ and plan precursor emissions, and CAA section 110(a)(2)(E)(i) requires the State to provide necessary assurances that it has adequate authority to carry out the implementation plan for the area. While the Plan describes certain water-related measures (*e.g.,* Nutrient Management Plans and Nitrogen Management Plan) that subject agricultural operators, including dairies, bovine feedlots, poultry operations, and crop farmers to waste discharge requirements, and likely limit ammonia emissions to the air, to our knowledge, these regulations do not impose any enforceable requirement for ammonia emissions to the air, and thus suffer a similar problem as Rule 4570.[120]

We agree that as a general matter, managing the amount of nitrogen applied to the environment should reduce the potential for pollution to air, water, and land. However, the 2018 $PM_{2.5}$ Plan does not quantify or otherwise substantiate the scale and timing of such potential ammonia emission reduction benefits, nor their enforceability. We propose that the State has not adequately identified potential control measures, evaluated for BACM/BACT, nor demonstrated the implementation of BACM/BACT for controlling ammonia emissions from fertilizer application, the second largest source of such emissions in the SJV.

As a result of our proposal that the State has not demonstrated that BACM/BACT controls are in place for CAFs and fertilizer application, two source categories that make up more than 90% of the ammonia emissions in the SJV, we propose to disapprove the State's BACM demonstration for ammonia sources.

3. BACM for Building Heating Emission Sources

a. Summary of 2021 Proposed Rule

In our 2021 Proposed Rule, the EPA summarized the State's submission in the 2018 $PM_{2.5}$ Plan for the SJV and presented our BACM evaluation for emission sources of direct $PM_{2.5}$ and NO_X.[121] We briefly summarize those components here with respect to the State's BACM demonstration for building heating emission sources, such as water heaters and space heaters (*e.g.,* furnaces), in the SJV.

In Appendix C of the 2018 $PM_{2.5}$ Plan, the District identifies the stationary and area sources of direct $PM_{2.5}$ and NO_X in the SJV that are subject to District emission control measures and provides its evaluation of these regulations for compliance with BACM requirements. As part of its process for identifying candidate BACM, the District reviewed the EPA's guidance documents on BACM, additional guidance documents on control measures for direct $PM_{2.5}$ and NO_X emission sources, and control measures implemented in other ozone and $PM_{2.5}$ nonattainment areas in California and other states.[122] Based on these analyses, the District concludes that all best available control measures for stationary and area sources are in place in the SJV for NO_X and directly emitted $PM_{2.5}$ for purposes of meeting the BACM/BACT requirement for the 2012 annual $PM_{2.5}$ NAAQS.

With respect to building heating emission sources, the District presents its evaluations of Rule 4902 (''Residential Water Heaters'') and Rule 4905 (''Natural Gas-Fired, Fan-Type Central Furnaces'') in sections C.20 and C.21, respectively, of Appendix C of the 2018 $PM_{2.5}$ Plan. Both rules are point of sale rules that limit what kinds of residential water heaters and furnaces may be sold in the SJV. The District describes the types of equipment covered by each rule, compares the specific provisions of each rule that

ammonia emissions from artificial feedyard surfaces,'' J. Environ. Qual. 35, 404–411, 2006.

[119] By focusing on these two source categories, the EPA is not indicating that this is an exhaustive list of ammonia source categories that must be evaluated for BACM. However, because these two categories amount to more than 90% of the ammonia emissions in the SJV, we focus our analysis on these two categories.

[120] Unlike Rule 4570, which has been approved into the California SIP to limit VOC emissions, the State's water-related regulations on fertilizer application have not been submitted for approval into the California SIP.

[121] 86 FR 74310, 74324–74325.

[122] 2018 $PM_{2.5}$ Plan, Ch. 4, section 4.3.1.

limit NO_X emissions [123] to comparable rules in other California air districts, and concludes that each rule represents BACM for their respective source category.

Rule 4902 applies to natural gas-fired, residential water heaters with heat input rates less than or equal to 75,000 British thermal units per hour (Btu/hr). The District tightened the rule's NO_X limits in 2009; and the EPA approved the rule into the SIP in 2010.[124] The District estimates that, due to Rule 4902, annual average emissions of NO_X would decrease from 2.15 tpd in 2013 to 1.91 tpd in 2025 (0.24 tpd decrease) and annual average emissions of direct $PM_{2.5}$ would increase from 0.21 tpd in 2013 to 0.23 tpd in 2025 (0.02 tpd increase).[125]

In addition to comparing the NO_X limits in its Rule 4902 to rules in other California air districts, the District also presents a multi-factor comparison of natural gas-fired and propane-fired, water heaters to electric water heaters.[126] The District discussed the likely impacts of requiring electric water heaters, including the advantages such as no NO_X emissions,[127] less expensive purchase price, and smaller size, and the disadvantages such as higher cost of electricity, and the costs of residence modifications to convert to electric. Based on 2017–2018 data, which is consistent with the timing of Plan adoption in 2018, the District calculated emission reductions and cost effectiveness of the three kinds of water heaters by fuel type and concluded that ''[w]hile the lifetime cost of an electric water heater is higher than that of propane and natural gas, the emissions benefits may make converting to electric water heating a viable control strategy.'' [128] The analysis does not explore the cost effectiveness of such controls and Rule 4902 does not include any requirements regarding electrification.

Rule 4905 applies to natural gas-fired, fan-type central furnaces with heat input rates less than 175,000 Btu/hr and combination heating and cooling units with a rated cooling capacity of less than 65,000 Btu/hr. In 2015, the District tightened the rule's NO_X limits for residential units and expanded the rule to include commercial units and manufactured homes according to a phase-in schedule. The EPA approved the rule into the SIP in 2016.[129] The District estimates that, due to Rule 4905, annual average emissions for NO_X will decrease from 2.44 tpd in 2013 to 2.13 tpd in 2025 (0.31 tpd decrease) and annual average emissions for direct $PM_{2.5}$ will increase from 0.20 tpd in 2013 to 0.22 tpd in 2025 (0.02 tpd increase).[130] Given the need to extend certain compliance deadlines in subsequent amendments to Rule 4905 due to limited supply of certified compliant units,[131] the District states that it had identified no additional emission reduction measures for this source category as of that point in time.[132]

As noted in the EPA's 2021 Proposed Rule, we provided our evaluation of the District's BACM demonstration for stationary and area sources in general, and several source categories in more detail, in three documents: (1) section III of the EPA's ''Technical Support Document, EPA Evaluation, San Joaquin Valley Serious Area Plan for the 2012 Annual $PM_{2.5}$ NAAQS,'' December 2021 (''EPA's 2012 Annual $PM_{2.5}$ TSD''); (2) the EPA's ''Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's BACM/MSM TSD''); and (3) the EPA's ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS,'' June 2020 (''EPA's 2020 Response to Comments''). In particular, the EPA's 2020 Response to Comments presented our evaluation of the District's BACM demonstration for residential water heaters and residential and commercial, natural gas-fired, fan-type central furnaces.[133] At that time we found that the requirements for residential fuel combustion covered by Rule 4902 and Rule 4905 represented BACM.[134] In addition, the EPA concluded that setting a zero-NO_X standard for heating appliances in new buildings reasonably requires additional consideration and analysis of technological and economic feasibility by the District because, per the 2018 $PM_{2.5}$ Plan, the most common types of residential water heaters and furnaces are those that use natural gas as fuel.

We also noted that the building codes referenced by commenters at that time appear to be green building code ordinances that restrict or prohibit installation of natural gas or propane appliances in new construction.[135] Such ordinances, most of which appeared to have been adopted in late 2019 and early 2020, fell within a category known as ''reach codes,'' which are city and county building code standards for energy efficiency that exceed California's State-wide standards. We stated that California law requires local governments to submit proposed ordinances to the California Energy Commission (CEC) for a determination that they will be both cost effective and more energy efficient than statewide standards; compliance with this procedure is necessary for such measures to be enforceable.[136] We also noted that ordinances adopted by city councils and county officials are legally distinct from measures adopted by the governing boards of the respective air districts and that it did not appear at the time that California air districts had adopted similar restrictions.

b. Summary of Adverse Comments

Public Justice states that further emission controls are available for building heating via the electrification of furnaces, water heaters, and other gas-fired appliances.[137] The commenters refer to comments submitted by a group of environmental, public health, and community organizations (collectively referred to herein as ''NPCA'') on the EPA's proposed rule on the 2006 24-hour $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan,[138] noting that building electrification requirements to reduce emissions from such sources already

[123] The District notes that equipment subject to Rule 4902 are fired on natural gas that meets California Public Utility Commission standards and, therefore, emit only low amounts of SO_X and direct $PM_{2.5}$. 2018 $PM_{2.5}$ Plan, App. C, C–288.

[124] 75 FR 24408 (May 5, 2010).

[125] 2018 $PM_{2.5}$ Plan, App. C, C–283.

[126] 2018 $PM_{2.5}$ Plan, App. C, C–288 to C–289.

[127] The EPA notes that while the NO_X emissions of electric water heaters and furnaces are zero, there could be an increase in NO_X emissions from electric power plants.

[128] 2018 $PM_{2.5}$ Plan, App. C, C–289.

[129] 81 FR 17390 (March 29, 2016).

[130] 2018 $PM_{2.5}$ Plan, App. C, C–290.

[131] The District further amended Rule 4902 in 2018, 2020, and 2021 to extend the compliance deadline for specific units due to limited supply of certified compliant units, with each amendment applying to a smaller subset of those specific units. See, *e.g.,* San Joaquin Valley UAPCD, ''Item Number 10: Adopt Proposed Amendments to Rule 4905 (Natural Gas-Fired, Fan-Type Central Furnaces),'' December 16, 2021, 2–3.

[132] 2018 $PM_{2.5}$ Plan, App. C, C–293. Unlike the District's consideration of electric water heaters, the District did not present an evaluation of electric furnaces in its analysis of Rule 4905.

[133] EPA's 2020 Response to Comments, Comment 6.O and Response 6.O, 142–148.

[134] EPA's 2020 Response to Comments, 146–147.

[135] EPA's 2020 Response to Comments, 147–148.

[136] California 2019 Building Energy Standards, at California Code of Regulations (CCR), Title 24, Part 1, Article 1, Sec. 10–106 (''Locally Adopted Energy Standards''); see also *https://ww2.energy.ca.gov/title24/2016standards/ordinances.*

[137] Public Justice Comment Letter, 19.

[138] Comment letter dated and received April 27, 2020, from Mark Rose, NPCA, et al., to Rory Mays, EPA, including Appendices A through G. The seven environmental and community organizations, in order of appearance in the letter, are the National Parks Conservation Association (NPCA), Earthjustice, Central Valley Air Quality Coalition, Coalition for Clean Air, Central Valley Environmental Justice Network, The Climate Center, and Central Valley Asthma Collaborative (collectively ''NPCA'').

exist in over 30 jurisdictions in California and other states. The commenters state that, since that time, additional jurisdictions have moved forward with gas bans, appliance standards, and other strategies for building heating.[139]

With respect to the EPA's response to the NPCA comments in 2020,[140] Public Justice argues that the ''EPA merely asserted that the District had found increased building electrification infeasible,'' despite the record showing that other jurisdictions required such measures, and assert that the District noted the potential of such measures but rejected them without explanation. The commenters further argue that the EPA did not rebut evidence on the benefits and feasibility of such measures, instead noting the need for further consideration, and that two years later, the Plan does not provide further consideration.

c. The EPA's Reconsidered Proposal

Based on the adverse comments from Public Justice, the EPA has reconsidered our proposed approval of the State's demonstration of BACM for NO_X and direct $PM_{2.5}$ emissions from building heating appliances, such as residential water heating and residential and commercial space heating. As discussed below, we now propose to disapprove the State's BACM demonstration for such building heating emission sources.

Although the EPA has previously approved the State's BACM demonstration for building heating emission sources in 2020 with respect to the 2006 24-hour $PM_{2.5}$ NAAQS portion of the 2018 $PM_{2.5}$ Plan, and such approval was upheld by the Ninth Circuit Court of Appeals,[141] several factors have reshaped the facts and circumstances of controlling emissions from such sources as of 2022 and beyond. First, while building ordinances that restrict or prohibit installation of natural gas or propane appliances in new construction were starting to appear in 2019 and 2020, as Public Justice correctly asserts, two additional years have passed and additional jurisdictions have adopted gas bans, appliance standards, and other strategies for building heating.[142] A recent policy brief published by the UCLA School of Law states that 52 cities and counties in California have adopted building codes to reduce their reliance on gas for building heating appliances, and discusses several examples.[143] The growth in the number and types of local control measures to reduce pollution from building heating by restricting or limiting the use of natural gas-fired heaters support their general availability as technologically feasible measures.

Second, the time horizon of the 2012 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan is one year later (2025 attainment date) than that of the 2006 24-hour $PM_{2.5}$ NAAQS portion of the Plan (2024 attainment date), affording additional time for potential control measures to achieve emission reductions that may assist attainment of the 2012 annual $PM_{2.5}$ NAAQS. Even if full implementation of such new measures is not possible by the applicable attainment date, the State should evaluate whether they could be implemented in part, consistent with the fifth step for BACM/BACT evaluation discussed in the $PM_{2.5}$ SIP Requirements Rule and the General Preamble (*i.e.,* to determine the earliest date by which a control measure or technology can be implemented in whole or in part).[144]

Third, some of the underlying bases for the District's cost comparison for residential water heating may have changed since the District's 2018 adoption of the Plan. For example, in comparing emission reductions and cost effectiveness of low-NO_X natural gas, propane, and electric water heaters, the District used data on energy factors and purchase price from Grainger Industrial Supply as of June 14, 2018, and lifetime energy cost data from the U.S. Energy Information Administration as of 2017. Furthermore, as claimed by Public Justice, the District did not explain its rejection of additional control measures of this type, other than to assert that they were generally more costly. Regarding residential and commercial space heating, CARB and the District did not provide a detailed economic feasibility analysis in the Plan. CARB and the District simply stated that, due to limited supply of certified compliant natural gas-fired units to comply with Rule 4905, they could identify no additional emission reduction measures. The incomplete cost analyses presented by the District, changes in costs over time, and lack of justification for rejecting measures to reduce pollution from building heating by restricting or limiting the use of natural gas-fired heaters indicate an insufficient economic feasibility analysis.

Fourth, CARB and at least one other air district (Bay Area AQMD) are moving forward in developing measures to set zero-emission standards for space heaters and water heaters. In developing its 2022 State SIP Strategy (for the 2015 ozone NAAQS), CARB has stated that the ''fuels we use and burn in buildings, primarily natural gas, for space and water heating contribute significantly to building-related criteria pollutant and GHG emissions and provide an opportunity for substantial emissions reductions where zero-emission technology is available.'' [145] Accordingly, CARB is developing zero-emission standard concepts and, given the intersection of air quality needs and other areas of building and energy regulation, and identifying other regulatory entities that they plan to engage, including the U.S. Department of Energy, CEC, and the California Building Standards Commission, Department of Housing and Community Development. We note, however, that the proposed 2022 State SIP Strategy released August 12, 2022, anticipates implementation starting in 2030, pending rule development and CARB Board hearing in 2025.[146]

The Bay Area AQMD hosted public meetings in 2021 and developed draft amendments to certain rules that would reduce NO_X emissions from residential and commercial furnaces and water heaters.[147] Specifically, Bay Area AQMD has developed draft amendments to two rules: (1) Regulation 9, Rule 4 (''Nitrogen Oxides from Fan Type Residential Central Furnaces''), which applies to furnaces with a heat input rate of less than 175,000 Btu/hr and combination heating and cooling units with a rated cooling capacity of less than 65,000 Btu/hr (like SJVUAPCD Rule 4905); and (2) Regulation 9, Rule 6 (''Nitrogen Oxides Emissions from

[139] Public Justice Comment Letter, 19, and Exhibits 41 through 44. Commenters also state that studies suggest these measures may provide particularly notable benefits to winter $PM_{2.5}$ peaks in the SJV. Id. at 19.

[140] EPA, ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS,'' June 2020. See Comment 6.O and Response 6.O on pages 142–147.

[141] Ninth Circuit Memorandum Order, 9. Regarding increased building electrification requirements, the Court stated that ''the EPA considered such an approach and reasonably accepted the State's determination that it was not feasible at this time.''

[142] See Public Justice Comment Letter, Exhibits 41 through 44.

[143] Heather Dadashi, Cara Horowitz, and Julia Stein, ''Pritzker Environmental Law and Policy Briefs, How Air Districts Can End NO_X Pollution From Household Appliances,'' Emmett Institute on Climate Change and the Environment, UCLA School of Law, March 2022, 8.

[144] 81 FR 58010, 58083–58085.

[145] CARB, ''Draft 2022 State Strategy for the State Implementation Plan,'' January 31, 2022, 86–88.

[146] CARB, ''Proposed 2022 State Strategy for the State Implementation Plan,'' August 12, 2022, 101–103.

[147] A summary of the Bay Area AQMD's rule development is available at: *https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances.*

Natural Gas-Fired Boilers and Water Heaters''), which applies to water heaters with a rated heat input capacity of 75,000 Btu/hr or less (like SJVUAPCD Rule 4902), as well as additional source types and sizes.[148]

For Rule 4, Bay Area AQMD staff have developed draft amendments to lower the current NO_X emission limit for applicable furnaces from 40 nanograms of NO_X per joule of useful heat (ng/j) to 14 ng/j (which would match the limit in SJVUAPCD Rule 4905) in the short term (with a compliance date of January 1, 2023); followed by a zero-NO_X emission requirement (with a compliance date of January 1, 2029); and expand the applicability beyond fan-type central furnaces to other types of equipment (*e.g.,* wall furnaces and direct vent units).[149] For Rule 6, which contains NO_X limits for small boilers and water heaters, Bay Area AQMD staff proposes a zero-NO_X emission requirement. However, staff also note that while technologies achieving zero-NO_X emissions exist, ''they are limited in availability and can be expensive,'' that such standards would be ''technology and market-forcing,'' and, therefore, staff proposes compliance dates of January 1, 2027, and January 1, 2031, depending on equipment heat rate (*i.e.,* the size of the boiler or water heater).[150]

CARB and Bay Area AQMD efforts in this area underscore the importance of building heating emission sources, such as water heaters and space heaters (*e.g.,* furnaces), throughout California and the continued effort to implement available control measures for these sources for criteria pollutant attainment planning requirements. At the same time, while SJVUAPCD, CARB, and Bay Area AQMD each acknowledge that zero-NO_X emission technology for small residential and commercial space and water heating is available, it is unclear what a feasible implementation horizon might be in light of CARB's strategy and the Bay Area AQMD's draft amendments. The plan as submitted did not address how such implementation considerations may or may not affect the feasibility of setting such zero-NO_X emission standards for space and water heating in small residential and commercial buildings in the SJV.

Given the factors discussed above, we now propose that the State has not adequately identified potential control measures, evaluated for BACM/BACT, nor demonstrated the implementation of BACM/BACT for controlling NO_X and direct $PM_{2.5}$ emissions from building emission heating sources in the SJV.

C. Attainment Demonstration

1. Summary of 2021 Proposed Rule

In sections IV.C (air quality modeling) and IV.F (attainment demonstration) of our 2021 Proposed Rule, the EPA summarized the CAA and regulatory requirements for air quality modeling and attainment demonstrations, the State's submission in the SJV $PM_{2.5}$ Plan, and our evaluation thereof.[151] We briefly summarize those components herein.

Sections 188(c)(2) and 189(b)(1)(A) of the CAA require that Serious area plans must include a demonstration (including air quality modeling) that provides for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable, but no later than the end of the tenth calendar year after the area's designation as nonattainment. The $PM_{2.5}$ SIP Requirements Rule also specifies that the control strategy in a Serious area attainment plan must provide for attainment as expeditiously as practicable.[152] The outermost statutory Serious area attainment date for the 2012 annual $PM_{2.5}$ NAAQS in the SJV is December 31, 2025 (absent an EPA-approved attainment date extension request under CAA section 188(e)). For purposes of determining the attainment date that is as expeditious as practicable, the State must conduct future year modeling that takes into account emissions growth, known emissions controls (including any controls that were previously determined to be RACM/RACT or BACM/BACT), any other emissions controls required to meet BACM/BACT, and additional measures as needed for expeditious attainment of the NAAQS. The regulatory requirements for Serious area plans are codified at 40 CFR 51.1010 (control strategy requirements) and 40 CFR 51.1011(b) (attainment demonstration and modeling requirements). We also described the EPA's $PM_{2.5}$ modeling guidance (''Modeling Guidance''),[153] including our recommendations therein for photochemical modeling, inputs, procedures, performance evaluation, emissions simulation, and calculating relative response factors (RRFs).

With respect to air quality modeling, the 2018 $PM_{2.5}$ Plan included the State's modeled attainment demonstration projecting that the SJV will attain the 2012 annual $PM_{2.5}$ NAAQS by December 31, 2025; the State's primary discussion of the photochemical modeling appears in Appendix K (''Modeling Attainment Demonstration''). The State provides a conceptual model of $PM_{2.5}$ formation in the SJV as part of the modeling protocol in Appendix L (''Modeling Protocol'') and describes emission input preparation procedures. The State presents additional relevant information in Appendix C (''Weight of Evidence Analysis'') of CARB's staff report for the 2018 $PM_{2.5}$ Plan,[154] which includes ambient trends and other data in support of the demonstration of attainment by 2025.

In the 2021 Proposed Rule, the EPA presented its review of the State's modeling approach and its many interconnected facets, including model input preparation, model performance evaluation, use of the model output for the numerical NAAQS attainment test, and modeling documentation, and found it to be generally consistent with the EPA's recommendations in the Modeling Guidance. We incorporated our evaluation of the Plan's modeling for the 2006 24-hour $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan [155] and extended that evaluation with information specific to the 2012 annual $PM_{2.5}$ NAAQS. Overall, in the 2021 Proposed Rule, we considered the State's analyses consistent with the EPA's guidance on modeling for $PM_{2.5}$ attainment planning purposes and proposed to find that the modeling in the 2018 $PM_{2.5}$ Plan was adequate for the purposes of supporting the State's RFP demonstration and the attainment demonstration.

With respect to the attainment demonstration, the SJV $PM_{2.5}$ Plan includes a modeled demonstration projecting attainment of the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025, based on emission reductions

[148] As in the San Joaquin Valley, larger boilers and similar equipment used in industrial, institutional, and large commercial settings are subject to other rules of the Bay Area AQMD, and therefore not subject to Rule 4 or Rule 6.

[149] Bay Area AQMD, ''Workshop Report, Draft Amendments to Building Appliance Rules—Regulation 9, Rule 4: Nitrogen Oxides from Fan Type Residential Central Furnaces and Rule 6: Nitrogen Oxide Emissions from Natural Gas-Fired Boilers and Water Heaters,'' September 2021, 1.

[150] Id.

[151] 86 FR 74310, 74322–74324 (air quality modeling) and 74325–74338 (attainment demonstration).

[152] 40 CFR 51.1011(b)(1); 81 FR 58010, 58087.

[153] Memorandum dated November 29, 2018, from Richard Wayland, Air Quality Assessment Division, OAQPS, EPA, to Regional Air Division Directors, EPA, Subject: ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' (''Modeling Guidance'').

[154] CARB, ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018 (''CARB Staff Report'').

[155] EPA Region IX, ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's 2006 NAAQS Modeling TSD'').

from implementation of baseline control measures and the development, adoption, and implementation of additional control measures to meet specific enforceable commitments. In the EPA's 2021 Proposed Rule, we described how the Plan's control strategy was to reduce emissions from sources of NO_X and direct $PM_{2.5}$ and that most of the projected emission reductions are achieved by baseline measures—*i.e.,* the combination of State and District measures adopted prior to the State's and District's adoption of the Plan—that will achieve ongoing emission reductions from the 2013 base year to the 2025 projected attainment year.

The remainder of the Plan's emission reductions are to be achieved by additional measures to meet enforceable commitments, including potential regulatory and incentive-based measures and, as necessary, substitute measures.[156] In the Valley State SIP Strategy and the 2018 $PM_{2.5}$ Plan, CARB and the District, respectively, included commitments to take action on specific measures by specific years or to develop substitute measures (referred to as ''control measure commitments'') and to achieve specified amounts of NO_X and direct $PM_{2.5}$ emission reductions by certain dates (referred to as ''aggregate tonnage commitments'').[157] We refer to these complementary commitments herein as ''aggregate commitments.''

In the 2021 Proposed Rule, the EPA described several findings relating to our evaluation of the SJV $PM_{2.5}$ Plan's attainment demonstration. First, we proposed to approve the Plan's emissions inventories and to find the Plan's air quality modeling adequate.[158] Second, we proposed to find that the Plan provides for expeditious attainment through the timely implementation of the control strategy to reduce emissions from sources of NO_X and direct $PM_{2.5}$, including RACM, BACM, and any other emission controls necessary for expeditious attainment.

Third, the EPA proposed to find that the emissions reductions that are relied on for attainment in the SIP submission are creditable. We noted that the SJV $PM_{2.5}$ Plan relies principally on already adopted and approved rules to achieve the emissions reductions needed to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025, and that the balance of the reductions that the State has modeled to achieve attainment by this date is currently represented by enforceable commitments that account for 13.8% of the NO_X and 8.0% of the direct $PM_{2.5}$ emissions reductions needed for attainment. In terms of our evaluation of CARB and the District's enforceable commitments, we proposed to find that circumstances in the SJV for the 2012 annual $PM_{2.5}$ NAAQS warrant the consideration of enforceable commitments and that the EPA's three criteria for such commitments had been met: (1) the commitments constitute a limited portion of the required emissions reductions; (2) both CARB and the District have demonstrated their capability to meet their commitments; and (3) the commitments are for an appropriate timeframe. We therefore proposed to approve the State's reliance on these enforceable commitments in its attainment demonstration.

Overall, in the 2021 Proposed Rule, we proposed to approve the SJV $PM_{2.5}$ Plan's demonstration of attainment of the 2012 annual $PM_{2.5}$ NAAQS by December 31, 2025, consistent with the requirements of CAA section 189(b)(1)(A). We presented the basis for our proposed determination in sections IV.F.3.a through IV.F.3.e of the 2021 Proposed Rule and provided further detail of our evaluation of baseline measures and the additional measures and aggregate commitments in sections II and IV, respectively, of the EPA's 2012 Annual $PM_{2.5}$ TSD.

2. Summary of Ninth Circuit Order and Adverse Comments

As introduced in section I.D of this proposed rule, in response to a petition for review of the EPA's approval of the 2006 24-hour $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan, the Ninth Circuit Court of Appeals issued a Memorandum Opinion that, in part, vacated the final action with respect the EPA's second factor for evaluating the validity of the State's enforceable commitments (*i.e.,* whether the State is capable of fulfilling its commitment). The Ninth Circuit's order is very relevant to this proposed rule because the State relied on the same common control strategy, including the same set of enforceable commitments (*i.e.,* the same set of control measure commitments and aggregate tonnage commitments) for both the 2006 24-hour $PM_{2.5}$ NAAQS Serious area plan and the 2012 annual $PM_{2.5}$ NAAQS Serious area plan.

The Ninth Circuit found that the EPA ''fail[ed] to provide evidence or a reasoned explanation for its conclusion that California will be able to fulfill its commitment'' in the face of a potential multi-billion dollar funding shortfall for incentive-based control measure commitments, ''which could result in emission reduction shortfalls of approximately 7% of the total NO_X reductions and 8% of the total $PM_{2.5}$ reductions necessary for attainment.'' [159] In response to the EPA's arguments that: (1) the funding shortfall may be smaller than projected; (2) emission reductions may be less expensive than the strategy predicts; (3) certain yet-to-be-quantified sources of reductions in the Plan may make up for shortfalls; and (4) California and the District may identify other measures to fulfill their commitments, the Court wrote that, ''[b]ecause these speculative assertions are unsupported by the evidence, they fail to ensure that California and the District have a plausible strategy for achieving this portion of the attainment strategy, and therefore do not collectively satisfy the second factor of the EPA's three-factor test.'' [160] It is important to emphasize that the State relied heavily on the projected emission reductions that it hopes to achieve through new control measures and emissions reductions reflected in the aggregate commitments. These reductions are crucial to the State meeting the modeled attainment demonstration and RFP requirements. If it is not credible that the State can meet the commitments, then the EPA cannot approve other nonattainment plan elements that rely upon them.

Separately, in comments on the EPA's 2021 Proposed Rule, Public Justice states that CARB and the District's aggregate tonnage commitments are to ''achieve a specific amount of reductions at the last possible moment prior to the attainment deadline with no concrete strategies for how that will be achieved.'' [161] They assert that prior plans with aggregate tonnage commitments for the 1997 annual $PM_{2.5}$ NAAQS by 2015 (*i.e.,* the 2008 $PM_{2.5}$ Plan) and then by 2020 (*i.e.,* the SJV $PM_{2.5}$ Plan) failed to attain those standards and that such past failures implies that the commitments failed to

[156] In this proposed rule, the term ''substitute measures'' means additional control measures that were not identified in CARB and the District's original control measure commitments in adopting the Valley State SIP Strategy and the 2018 $PM_{2.5}$ Plan, respectively. The ''substitute'' aspect primarily relates to emission reductions (*i.e.,* providing emission reductions where any adopted measure achieves less emission reductions than originally estimated, and/or providing emission reductions in lieu of any originally planned measure that is not adopted). They are also sometimes referred to as ''alternative measures'' in the SJV $PM_{2.5}$ Plan and adopting resolutions.

[157] CARB Resolution 18–49 and SJVUAPCD Governing Board Resolution 18–11–16, paragraph 6.

[158] Sections IV.A (emissions inventory) and IV.C (air quality modeling) of the 2021 Proposed Rule.

[159] *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #58–1 (9th Cir., April 13, 2022), 6.

[160] Id. at 7.

[161] Public Justice Comment Letter, 20.

deliver the promised clean air.[162] The commenters further state that ''deferred, unspecified, and last-minute promises to achieve reductions (*i.e.,* aggregate commitments), inflicts disparate impacts in violation of Title VI,'' irrespective of whether the commitments comply with the CAA.

3. The EPA's Reconsidered Proposal

As a result of the Ninth Circuit Memorandum Opinion with respect to the SJV $PM_{2.5}$ Plan's enforceable commitments, the EPA has reconsidered its proposed approval of the Plan's demonstration of attainment for the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025, and now proposes to disapprove the Plan's attainment demonstration. The Ninth Circuit Memorandum Opinion raised concerns about the ability of CARB and the District to fulfill the commitments.

We present our reconsideration in the following sections of this proposed rule: (1) our reconsideration of CARB and the District's enforceable commitments and proposal that the commitments do not meet the second factor of the EPA's three-factor test (in section II.C.3.a); and (2) the effect of our proposed disapproval of the State's enforceable commitments and specific portions of the State's BACM demonstration on the modeled attainment demonstration (in section II.C.3.b).

a. Additional Measures and Enforceable Commitments

In this subsection we re-examine CARB and the District's enforceable commitments. We describe CARB and the District's progress in adopting specific measures that they committed to present for governing board adoption, and evaluate whether CARB and the District have demonstrated the capability to achieve specific tonnages of reductions that they committed to achieve by the 2025 attainment year. We first enumerate the measures that have already been approved into the SIP and quantify the amount of the tonnage commitment that these account for. We then calculate CARB and the District's remaining commitments as of the time of this notice, describe the strategy that CARB and the District have provided for achieving the remaining reductions (consisting of submitted measures that have not yet been approved into the SIP, adopted measures that have not yet been submitted to the EPA, measures under development, and other potential future measures), and calculate the reductions that may be associated with these measures. We conclude that although CARB and the District have made substantial progress toward achieving the committed-to reductions, CARB and the District have not presented a plausible strategy demonstrating that they are capable of achieving the *entirety* of the aggregate commitment.

In our 2021 Proposed Rule, the EPA described the SJV $PM_{2.5}$ Plan's series of CARB and District commitments to achieve emission reductions through additional control measures, beyond baseline measures, that are intended to contribute to expeditious attainment of the 2012 annual $PM_{2.5}$ NAAQS. For mobile sources, CARB identified a list of 12 State regulatory measures and 3 incentive-based measures that CARB has committed to propose to its Board for consideration by specific years.[163] For stationary sources, the District identified a list of nine regulatory measures and three incentive-based measures that the District has committed to propose to its Board for consideration by specific years.[164]

The Plan contains CARB's and the District's estimates of the emission reductions that could be achieved by each of these additional measures, if adopted as planned.[165] As we described in our 2021 Proposed Rule, CARB's commitments are contained in CARB Resolution 18–49 (October 25, 2018) and the Valley State SIP Strategy and consist of two parts: a control measure commitment and a tonnage commitment.

First, CARB has committed to ''begin the measure's public process and bring to the Board for consideration the list of proposed SIP measures outlined in the *Valley State SIP Strategy* and included in Attachment A, according to the schedule set forth.'' [166] By email dated November 12, 2019, CARB confirmed that it intended to begin the public process on each measure by discussing the proposed regulation or program at a public meeting (workshop, working group, or Board hearing) or in a publicly-released document, and to then propose the regulation or program to its Board.[167] Second, CARB has committed ''to achieve the aggregate emissions reductions outlined in the Valley State SIP Strategy of 32 tpd of NO_X and 0.9 tpd of $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2024 and 2025.'' [168] The Valley State SIP Strategy explains that CARB's overall commitment is to ''achieve the total emission reductions necessary to attain the Federal air quality standards, reflecting the combined reductions from the existing control strategy and new measures'' and that ''if a particular measure does not get its expected emissions reductions, the State is still committed to achieving the total aggregate emission reductions.'' [169]

Similarly, in our 2021 Proposed Rule, we explained that the District's commitments are contained in SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018) and Chapter 4 of the 2018 $PM_{2.5}$ Plan and also consist of two parts: a control measure commitment and a tonnage commitment. First, the District has committed to ''take action on the rules and measures committed to in Chapter 4 of the Plan by the dates specified therein, and to submit these rules and measures, as appropriate, to CARB within 30 days of adoption for transmittal to EPA as a revision to the [SIP].'' [170] By email dated November 12, 2019, the District confirmed that it intended to take action on the listed rules and measures by beginning the public process on each measure, *i.e.,* discussing the proposed regulation or program at a public meeting, including a workshop, working group, or Board hearing, or in a publicly-released document, and then proposing the rule or measure to the SJVUAPCD Governing Board.[171] Second, the District has

[162] Public Justice refers specifically to the EPA's November 2016 finding of failure to attain and the EPA's November 2021 final disapproval of the 1997 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan. 81 FR 84481 (November 23, 2016) and 86 FR 67329 (November 26, 2021), respectively.

[163] CARB Resolution 18–49, Attachment A and Valley State SIP Strategy, Table 7 (''State Measures and Schedule for the San Joaquin Valley''). The schedule of proposed SIP measures in Table 7 includes two additional CARB measures: the second phase of the Advanced Clean Cars Program (''ACC 2'') and the ''Cleaner In-Use Agricultural Equipment'' measures. However, these measures are not scheduled for implementation until 2026 and 2030, respectively, which is after the January 1, 2025 implementation deadline under 40 CFR 51.1011(b)(5) for control measures necessary for attainment by December 31, 2025. Therefore, we are not reviewing these measures as part of the control strategy to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

[164] SJVUAPCD Governing Board Resolution 18–11–16 and 2018 $PM_{2.5}$ Plan, Table 4–4 (''Proposed Regulatory Measures'') and Table 4–5 (''Proposed Incentive-Based Measures'').

[165] 2018 $PM_{2.5}$ Plan, Ch. 4, Table 4–3 (''Emission Reductions from District Measures'') and Table 4–9 (''San Joaquin Valley Expected Emission Reductions from State Measures'') and Valley State SIP Strategy, Table 8 (''San Joaquin Valley Expected Emission Reductions from State Measures'').

[166] CARB Resolution 18–49, 5.

[167] Email dated November 12, 2019, from Sylvia Vanderspek, CARB, to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'') and CARB Staff Report, 14.

[168] CARB Resolution 18–49, 5.

[169] Valley State SIP Strategy, 7.

[170] SJVUAPCD Governing Board Resolution 18–11–16, 10–11.

[171] Email dated November 12, 2019, from Jon Klassen, SJVUAPCD, to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ Plan'' (attaching ''District Progress in

committed to ''achieve the aggregate emissions reductions of 1.88 tpd of NO_X and 1.3 tpd of $PM_{2.5}$ by 2024/2025'' through adoption and implementation of these measures or, if the total emission reductions from these rules or measures are less than these amounts, ''to adopt, submit, and implement substitute rules and measures that achieve equivalent reductions in emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors'' in the same implementation timeframes.[172]

In sections IV.F.3.c and IV.F.3.d of our 2021 Proposed Rule, the EPA described CARB's and the District's progress as of that point in time on their control measure commitments and progress towards fulfilling their respective aggregate commitments, respectively. Based on our reconsideration of the State's enforceable commitments in light of the Ninth Circuit Memorandum Opinion, while we propose to retain certain findings with respect to the State's progress, we now propose that the State has not adequately demonstrated that it can fulfill the remaining portions of its enforceable commitments (*i.e.,* the second factor of the EPA's three-factor test). We present our reconsidered evaluation of the status of CARB's and the District's control strategy and our three-factor test for enforceable commitments, as follows.

With respect to progress on the control measure commitments, CARB and the District together have adopted 18 measures of the 27 control measure commitments in the SJV $PM_{2.5}$ Plan and have begun the public process on 5 of the remaining control measure commitments, which is unchanged since the time of our 2021 Proposed Rule. This progress is described in further detail in CARB and the District's ''Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley'' (2021 Progress Report).[173] For CARB's portion, CARB has adopted 10 of the 15 measures identified in its commitment (including one incentive-based measure) and begun the public process on 3 of the remaining 5 measures. For the District's portion of the control measure commitments, the District has adopted 8 of the 12 measures identified in its commitment (including one incentive-based measure) and begun the public process on 2 of the remaining 4 measures.

Although CARB and the District have made substantial progress in developing and adopting the regulatory measures listed in their respective control measure commitments, they have not yet fulfilled the commitments for several measures in accordance with the timeframes established in the SJV $PM_{2.5}$ Plan. We provide further detail on CARB and the District's control measure commitments in section IV.A of the EPA's 2012 Annual $PM_{2.5}$ TSD (including tables IV–A and IV–B regarding CARB and the District's control measure commitments, respectively).[174]

Regarding the remaining nine measures not yet proposed for board consideration, we continue to note that one measure, Rule 4550 (''Conservation Management Practices''), has an action year of 2022 in the 2018 $PM_{2.5}$ Plan (*i.e.,* the District has the remainder of 2022 to present a proposed measure for board consideration) and that four regulatory measures and four incentive-based measures are overdue. For the four regulatory measures, while CARB and the District have not proposed these measures to their respective boards, they began the public process on each of the four measures on time with respect to the schedule of their respective public process commitments. To our knowledge, CARB anticipates board consideration of the diesel fuel measures in 2022 and the forklift measure in 2022 or 2023[175] and continues to develop the airport ground support equipment measure; the District continues to evaluate potential amendments to Rule 4692 in the near future.[176]

For the four incentive-based measures, CARB and the District continue to invest in reducing emissions from heavy-duty trucks and buses, off-road equipment, agricultural operation internal combustion engines, and commercial under-fired charbroiling.[177] However, while CARB and the District have discussed the proposed programs at board hearings,[178] to our knowledge, CARB and the District have not started the public process for the four incentive-based control measure commitments as enforceable measures to be submitted to the EPA for approval and inclusion as control measures in the California SIP. Furthermore, as discussed in section IV.F.3.c of our 2021 Proposed Rule, for heavy-duty trucks and off-road equipment, CARB acknowledges that many of the project lives do not span the attainment year[179] and, thus, while these projects may accelerate emission reductions and benefit communities in the SJV, the projects that qualify for SIP credit may be limited for the purposes of the 2012 annual $PM_{2.5}$ NAAQS Serious area attainment demonstration.

Overall, while CARB and the District have made substantial progress in developing and adopting the regulatory measures listed in their respective control measure commitments that were submitted in the SJV $PM_{2.5}$ Plan, in light of the Ninth Circuit Memorandum Opinion, we have reconsidered the effect of the eight overdue measures of the original commitments and in particular the overdue incentive-based measures, on our evaluation of CARB and the District's aggregate tonnage commitments and our three-factor test. Under the second factor of the EPA's test for enforceable commitments, the

Implementing Commitments with 2018 $PM_{2.5}$ Plan'').

[172] SJVUAPCD Governing Board Resolution 18–11–16, 10–11.

[173] ''Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley,'' October 19, 2021. Transmitted to the EPA by letter dated October 20, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. See sections of 2021 Progress Report entitled ''Progress in Implementing District Measures'' and ''Progress in Implementing CARB Measures.''

[174] We note that Table IV–A of the EPA's 2012 Annual $PM_{2.5}$ TSD contained an error with respect to the adoption date of CARB's measure for Transportation Refrigeration Units Used for Cold Storage. While CARB had heard proposed amendments to the measure on September 23, 2021, the measure was not actually adopted until February 24, 2022, following further process and rule adjustments required by the Board. CARB Resolution 22–5, February 24, 2022.

[175] In the 2021 Progress Report (dated October 19, 2021), page 20, CARB indicates that the Zero-Emission Off-Road Forklift Regulation Phase 1 would be presented for Board consideration ''as early as 2022,'' while CARB's updated ''SJV $PM_{2.5}$ SIP Measure Tracking'' (dated December 2021) anticipates presenting the measure to the Board in Summer 2023.

[176] 2021 Progress Report, 8–9, 20–22, and tables 2 and 3.

[177] CARB, ''Long-Term Heavy-Duty Investment Strategy, Including Fiscal Year 2020–21 Three-Year Recommendations for Low Carbon Transportation Investments,'' (App. D to CARB's ''Proposed Fiscal Year 2021–22 Funding Plan for Clean Transportation Incentives''), release date October 8, 2021; and SJVUAPCD, ''Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2020,'' release date December 23, 2020. See also, 2021 Progress Report, 3 and 15.

[178] For example, CARB staff discussed the Accelerated Turnover of Trucks and Buses Incentive Measure at its annual 2020 update to the CARB Board. CARB presentation, ''Update on the 2018 $PM_{2.5}$ SIP for the San Joaquin Valley,'' October 22, 2020. District staff discussed and adopted an emission reductions strategy for commercial under-fired charbroiling, including incentives, in December 2020. SJVUAPCD, ''Item Number 11: Adopt Proposed Commercial Under-Fired Charbroiling Emission Reduction Strategy,'' December 17, 2020.

[179] Id. at 24 and 32. Generally, mobile source incentive projects implemented under the Carl Moyer program are under contract only during the ''project life'' and may not be credited with SIP emission reductions after the project life ends. EPA Region IX, ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan California Air Resources Board Resolution 19–26 San Joaquin Valley Agricultural Equipment Incentive Measure,'' February 2020, 12–13.

Agency must evaluate whether a State is capable of fulfilling such commitments. The tardiness of presenting these control measures for board consideration renders the reductions from these measures more speculative under the second factor.

With respect to the aggregate tonnage commitments to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV, we reiterate that CARB committed to achieve 32 tpd of NO_X and 0.9 tpd of $PM_{2.5}$ emissions reductions, and the District committed to achieve 1.88 tpd of NO_X and 1.3 tpd of $PM_{2.5}$ emissions reductions by 2025. These aggregate tonnage commitments sum to 33.88 tpd NO_X and 2.2 tpd direct $PM_{2.5}$. CARB and the District have committed to achieve these reductions via the 27 control measure commitments, or such other substitute measures as may be necessary, to achieve the aggregate tonnage commitments for NO_X and direct $PM_{2.5}$.

For the purpose of our analysis of the State's progress toward achieving its aggregate tonnage commitments, of the 18 measures adopted by December 2021, as well as the adoption of an important substitute measure (the Agricultural Burning Phase-out Measure [180]), the State has submitted 12 measures as revisions to the California SIP (*i.e.,* more than the 9 measures submitted to EPA as of the time of the 2021 Proposed Rule). Since December 2021, the EPA finalized or proposed approval of three control measure SIP submissions that were control measure commitments in the SJV $PM_{2.5}$ Plan.

First, the EPA finalized approval of the Heavy-Duty Vehicle Inspection Program (HDVIP) and Periodic Smoke Inspection Program (PSIP).[181] However, as in our 2021 Proposed Rule, CARB has not yet provided its analysis of the basis for this emission reduction estimate (of 0.02 tpd direct $PM_{2.5}$, per the State's 2021 Progress Report). Therefore, the EPA is not proposing at this time to credit this measure with any particular amount of emission reductions towards attainment of the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

Second, the EPA finalized approval of the Agricultural Burning Phase-out Measure,[182] which includes a schedule to phase-out (*i.e.,* introduce prohibitions of) agricultural burning for additional crop categories or materials accounting for a vast majority of the tonnage of agricultural waste in phases that started January 1, 2022, and become fully implemented by January 1, 2025.[183] The EPA received comments from the District that supported approval of the Agricultural Burning Phase-out Measure into the SIP while also advocating for a higher rule effectiveness rate (*i.e.,* 95% instead of EPA's proposed 80%),[184] which in turn would increase the amount of emission reductions that the EPA would credit towards fulfilling the District's aggregate tonnage commitment. We continue to evaluate these comments and for now have retained our proposal to credit the measure for emission reductions of 0.83 tpd NO_X and 1.23 tpd direct $PM_{2.5}$, consistent with the 80% rule effectiveness rate used by the EPA in the 2021 Proposed Rule.

Third, the EPA has proposed approval of Rule 4311 (''Flares''), as amended December 17, 2020.[185] The District's staff report for Rule 4311 estimates that the emission reductions from these amendments would be 0.19 tpd NO_X and 0.03 tpd direct $PM_{2.5}$ in 2025.[186] The EPA continues to evaluate the District's estimate with respect to SIP-creditable emission reductions, though we note that they are relatively small when compared to the overall 207.38 tpd NO_X and 6.4 tpd direct $PM_{2.5}$ modeled to attain the 2012 $PM_{2.5}$ NAAQS and to the combined aggregate tonnage commitments of 33.88 tpd NO_X and 2.2 tpd direct $PM_{2.5}$.

Similar to our 2021 Proposed Rule, we propose to credit reductions from three measures, all of which are now approved into the SIP and have large associated emission reductions of direct $PM_{2.5}$ and/or NO_X in the SJV.[187] The three measures are: Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''); two of three parts of the Agricultural Equipment Incentive Measure (for which we described our proposed SIP credit in the 2021 Proposed Rule); and the Agricultural Burning Phase-out Measure (for which we described our proposed SIP credit in this proposed rule).[188]

Based on these SIP-approved measures, our estimate of the remaining aggregate tonnage commitments remains the same as in our 2021 Proposed Rule. Specifically, in Table 1 herein we summarize the total NO_X and direct $PM_{2.5}$ emission reductions that the State models as sufficient to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025, the emission reductions attributed to baseline measures and new control strategy measures (including only measures currently approved into the California SIP), and the emission reductions remaining as aggregate tonnage commitments.

TABLE 1—REDUCTIONS FOR ATTAINMENT IN 2025 AND AGGREGATE TONNAGE COMMITMENTS

		NO_X (tpd)	Direct $PM_{2.5}$ (tpd)
A	Total reductions from baseline and control strategy measures modeled to achieve attainment	207.38	6.4
B	Reductions from baseline measures	173.5	4.2
C	Reductions from additional measures *approved* into the California SIP	5.29	1.69
D	Total reductions remaining as commitments (A–B–C)	28.59	0.51
E	Percent of total reductions needed remaining as commitments (D/A)	13.8%	8.0%

Sources: 2018 $PM_{2.5}$ Plan, Ch. 4, tables 4–3 and 4–7, and Appendix B, tables B–1 and B–2.

[180] See 87 FR 36222 (June 16, 2022).

[181] 87 FR 27949 (May 10, 2022).

[182] 87 FR 36222.

[183] SJVUAPCD, ''Supplemental Report and Recommendations on Agricultural Burning,'' June 17, 2021 (''2021 Supplemental Report''), including Table 2–1 (''Accelerated Reductions by Crop Category'').

[184] Letter dated January 25, 2022, from Jonathan Klassen, Director of Air Quality Science and Planning, SJVUPACD, to Michael Regan, Administrator, U.S. EPA.

[185] 87 FR 3736 (January 25, 2022).

[186] SJVUAPCD, ''Item Number 12: Adopt Proposed Amendments to Rule 4311 (Flares),'' December 17, 2020, Attachment C (''Final Draft Staff Report with Appendices for Proposed Amendments to Rule 4311''), 21–22.

[187] The seven additional measures submitted as SIP revisions for which the EPA has not proposed action as of August 2022 include: the Innovative Clean Transit measure (submitted February 13, 2020); Rules 4306 and 4320 (submitted March 12, 2021); Rule 4702 (submitted October 15, 2021); Rules 4352 and 4354 (submitted March 9, 2022), and the Residential Wood Burning Incentive Measure (submitted March 17, 2022).

[188] Final actions on these measures are as follows: 85 FR 44206 (July 22, 2020) (Rule 4901), 86 FR 73106 (December 27, 2021) (Agricultural Equipment Incentive Measure), and 87 FR 36222 (June 16, 2022) (Agricultural Burning Phase-out Measure).

As shown in Table 1, 13.8% of the NO_X reductions necessary for attainment and 8.0% of the direct $PM_{2.5}$ reductions necessary for attainment remain as aggregate tonnage commitments (*i.e.,* combining CARB and the District's remaining commitments).[189] Based on the direct $PM_{2.5}$ emission reductions that the EPA has credited to Rule 4901 (0.2 tpd) and the Agricultural Burning Phase-out Measure (1.23 tpd), which add up to 1.43 tpd, we conclude that the District has exceeded its 1.3 tpd direct $PM_{2.5}$ commitment by 0.13 tpd.

Beyond the measures that the EPA has taken final action to approve into the California SIP and proposed to credit herein, CARB has provided updated emission reduction estimates for 10 additional measures, including 9 that have been adopted, as well as one substitute measure in development, as described in the 2021 Progress Report. The CARB measure with the largest updated emission reduction estimates is the Heavy-Duty Vehicle Inspection and Maintenance Program (''Heavy-Duty I/M'').

The District has similarly provided updated emission reduction estimates for seven additional measures, including six that have been adopted. The District measures with the largest updated emission reduction estimates include amendments to Rule 4702 (''Internal Combustion Engines'') (0.61 tpd NO_X), the Residential Wood Burning Devices Incentive Projects measure (0.33 tpd direct $PM_{2.5}$), and Rule 4354 (''Glass Melting Furnaces'') (0.5 tpd NO_X and 0.04 tpd direct $PM_{2.5}$), as well as amendments planned in 2022 to Rule 4550 (''Conservation Management Practices'') (0.32 tpd direct $PM_{2.5}$).

The EPA is not proposing to credit towards the aggregate tonnage commitments the updated emission reduction estimates from these additional District measures. We will review and act on the CARB and District measures submitted to date (Innovative Clean Transit, Rule 4306, Rule 4320, Rule 4702, Rule 4352, Rule 4354, and the Residential Wood Burning Incentive Measure), as well as future measure submissions, in separate rulemakings, during which time the public will have an opportunity to review and provide comment.

Although we are not proposing to credit reductions from these measures at this time, in order to determine whether CARB and District have the capability to meet their aggregate tonnage commitments, we have re-evaluated the updated emission reduction estimates to assess whether they could meet the NO_X and/or direct $PM_{2.5}$ emission reduction commitments with these measures or, if not, how much would remain of CARB and the District's unfulfilled aggregate tonnage commitments.

TABLE 2—HYPOTHETICAL EMISSION REDUCTIONS FROM ESTIMATED, ADOPTED, AND/OR SUBMITTED ADDITIONAL MEASURES AND EFFECT ON REMAINING AGGREGATE TONNAGE COMMITMENTS FOR 2025

		NO_X (tpd)	Direct $PM_{2.5}$ (tpd)
A	Total reductions needed from baseline and control strategy measures (see Table 1, row A of this proposed rule).	207.38	6.4
B	Total reductions remaining as commitments after SIP credit (see Table 1, row D of this proposed rule).	28.59	0.51
	CARB:		
	Submitted Measures:		
	HDVIP and PSIP [a]	0	0.02
	Innovative Clean Transit	0.017	<<0.01
C	Sub-Total	0.017	0.02
	Additional Adopted Measures:		
	Heavy-Duty I/M	14.7	0.03
	Amended Warranty Requirements for Heavy-Duty Vehicles	0.34	<<0.01
	Heavy-Duty Low-NO_X Engine Standard—California Action	0	0
	Advanced Clean Local Trucks (Last Mile Delivery)	0.08	<<0.01
	Zero-Emission Airport Shuttle Buses	<<0.01	<<0.01
	Small Off-Road Engines	0.155	0.007
	Transport Refrigeration Units Used for Cold Storage	0.04	0.01
	Agricultural Equipment Incentive Measure-Phase 1 (NRCS portion)	0.64	0.04
	Agricultural Equipment Incentive Measure Phase 2	4.9	0.5
D	Sub-Total	15.955	0.087
	Measures Not Yet Presented for Board Consideration: [b]		
	Zero-Emission Off-Road Forklift Regulation Phase 1	0.02	<<0.01
E	Sub-Total	4.92	0.5
F	*Grand Total for CARB (C+D+E)*	20.892	0.607
	SJVUAPCD:		
	Submitted Measures:		
	Rule 4311 (''Flares'')	0.19	0.03
	Rule 4306 (''Boilers, Steam Generators, and Process Heaters—Phase 3'')	0.19	0
	Rule 4320 (''Advanced Emission Reduction Option for Boilers, Steam Generators, and Process Heaters greater than 5 MMBtu/hr'') [c].	0	0
	Rule 4352 (''Solid Fuel Fired Boilers, Steam Generators, and Process Heaters'')	0.5	0.04
	Rule 4354 (''Glass Melting Furnaces'')	0.2	0.04

[189] However, we note that if the EPA were to grant maximum credit for the emission reductions calculated by the District for Rule 4311 (0.19 tpd NO_X and 0.03 tpd direct $PM_{2.5}$), the remaining aggregate tonnage commitments would be 28.4 tpd NO_X (13.7% of total reductions needed to attain in 2025) and 0.48 tpd direct $PM_{2.5}$ (7.5% of total reductions needed to attain in 2025).

TABLE 2—HYPOTHETICAL EMISSION REDUCTIONS FROM ESTIMATED, ADOPTED, AND/OR SUBMITTED ADDITIONAL MEASURES AND EFFECT ON REMAINING AGGREGATE TONNAGE COMMITMENTS FOR 2025—Continued

		NO_X (tpd)	Direct $PM_{2.5}$ (tpd)
	Rule 4702 (''Internal Combustion Engines'')	0.61	0
	Residential Wood Burning Incentive Measure	0	0.33
G	Sub-Total	1.69	0.44
	Measures Not Yet Presented for Board Consideration:		
	Rule 4550 (''Conservation Management Practices'')	0	0.32
H	Sub-Total	0	0.32
I	*Grand Total for SJVUAPCD (G+H)*	1.69	0.76
J	*Grand Total (F+I)*	22.58	1.37
K	Assuming maximum SIP credit, total reductions remaining as commitments (B–J)	6.01	−0.86

Sources: 2021 Progress Report, Table 2 and Table 3.

[a] As discussed herein, the EPA has taken final action to approve CARB's HDVIP and PSIP measure into the California SIP but we are not yet proposing SIP credit for these two measures.

[b] Given the complexities involved in regulating locomotive emissions, we have conservatively excluded from our analysis the emission reduction estimates in the 2021 Progress Report for CARB's In-Use Locomotive Measure.

[c] The District's draft staff report for Rule 4306 and Rule 4320 estimate emission reductions of 0.19 tpd NO_X and 0.45 tpd NO_X, respectively, in 2024. However, the District notes that it is not proposing the emission reductions from Rule 4320 for SIP credit at this time. SJVUAPCD, ''Draft Staff Report, Proposed Amendments to Rule 4306 (Boilers, Steam Generators, and Process Heaters—Phase 3), Proposed Amendments to Rule 4320 (Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater Than 5.0 MMBtu/hr),'' November 25, 2020, 4.

Assuming the EPA were to agree with the maximum credit for the emission reductions estimated by CARB and the District in the 2021 Progress Report, these additional measures could achieve emission reductions of 22.58 tpd NO_X and 1.37 tpd direct $PM_{2.5}$. Combined with the reductions from additional measures already approved by EPA into the California SIP (5.29 tpd NO_X and 1.69 tpd direct $PM_{2.5}$, per Row C of Table 1 of this proposed rule), the State would achieve emission reductions of 27.87 tpd NO_X and 3.06 tpd direct $PM_{2.5}$. Compared to the combined aggregate tonnage commitments, the State would have remaining aggregate tonnage commitments of 6.01 tpd NO_X and would have exceeded the aggregate tonnage commitments by 0.86 tpd direct $PM_{2.5}$. More specifically, CARB would have remaining commitments of 6.65 tpd NO_X and 0.03 tpd direct $PM_{2.5}$, and the District would have exceeded its commitments by 0.64 tpd NO_X and 0.89 tpd direct $PM_{2.5}$.

However, given the remaining NO_X commitments for CARB, which are approximately 3% of the NO_X emission reductions modeled to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV by 2025, we have given additional consideration to the evidence of emission reductions for two source categories that have large emission reduction estimates: Heavy-Duty I/M and the Agricultural Equipment Incentive Measures, including the NRCS portion of the Phase 1 measure adopted by CARB in 2019 and the Phase 2 measure slated for 2024 consideration, per the 2021 Progress Report.

With respect to Heavy-Duty I/M, in the Valley State SIP Strategy, CARB originally estimated that it would achieve 6.8 tpd NO_X and <0.1 tpd direct $PM_{2.5}$ in 2025 and described the regulatory concepts that would reflect the current (as of 2018) ''advanced engine and exhaust control technologies, including on-board diagnostics (OBD).'' [190] Since that time, as described in the State's 2021 Progress Report and the EPA's 2021 Proposed Rule, California has developed additional provisions related to Heavy-Duty I/M that the State estimates would achieve emission reductions of 14.7 tpd NO_X and 0.03 tpd direct $PM_{2.5}$ in 2025.[191]

While the EPA would still not propose to approve a specific amount of SIP-creditable reductions until after the State submits such measure in final form to the EPA as a revision to the SIP, we have re-examined the role of the potential additional emission reductions from Heavy-Duty I/M presented by CARB. As a qualitative matter, we agree that the requirements under California Senate Bill 210 (2019) that heavy-duty vehicles comply with Heavy-Duty I/M in order to register annually with the California Department of Motor Vehicles, as well as the implementation of roadside emissions monitoring (*i.e.,* the Portable Emissions AcQuisition System, ''PEAQS'') in the SJV to detect high emitting vehicles between periodic test cycles, are tangible additions that would increase the emission reductions relative to what was contemplated at the time of Plan adoption in November 2018 (by the District) and January 2019 (by CARB).

As a quantitative matter, however, the scale of the estimated 14.7 tpd NO_X emission reductions is roughly half the remaining aggregate commitment of 28.59 tpd NO_X and represents 7.1% of the 207.38 tpd NO_X modeled for attainment and a substantial increase from CARB's original estimate of 6.8 tpd NO_X (3.3% of the 207.38 tpd NO_X). This 14.7 tpd NO_X represents a substantial quantity that, pursuant to the Ninth Circuit Memorandum Opinion, must be supported by evidence to ''ensure that California and the District have a plausible strategy for achieving this portion of the attainment strategy'' in order to satisfy the second factor of the three-factor aggregate commitment test.[192] While CARB documented its extensive regulatory and technical

[190] Valley State SIP Strategy, 19–20 and Table 8.

[191] 2021 Progress Report, 19. CARB notes that further detail on emission reduction calculations can be found in the CARB staff report on Heavy-Duty I/M, released October 15, 2021. See, CARB, ''Staff Report: Initial Statement of Reasons, Public Hearing to Consider the Proposed Heavy-Duty Inspection and Maintenance Regulation,'' October 8, 2021, (''Heavy-Duty I/M ISOR'') and App. H (''Proposed Heavy-Duty Inspection and Maintenance Regulation, Standardized Regulatory Impact Assessment'').

[192] See *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #58–1, 7 (9th Cir., April 13, 2022).

analyses in the measure's Initial Statement of Reasons and associated appendices,[193] CARB has not provided the detailed basis of its calculations of 14.7 tpd NO_X and 0.03 tpd direct $PM_{2.5}$ emission reductions to the EPA. Given that CARB may do so in a future control measure SIP submission, and we lack the record evidence to do so here, we do not suggest an alternative amount of emission reduction from Heavy-Duty I/M in this proposed rule. Rather, we note that the more detailed calculations and technical report necessary to support such an estimate, specific to the SJV and to annual average emission reductions in 2025, are not available, and therefore we do not have sufficient support in the record at this time to rely on the State's estimated reductions, in line with the Ninth Circuit Memorandum Opinion.

With respect to mobile agricultural equipment, the EPA has taken final action to approve the Funding Agricultural Replacement Measures for Emission Reductions (FARMER) program and the Carl Moyer Memorial Air Quality Standards Attainment Program (''Carl Moyer'') portions of CARB's first incentive measure on agricultural equipment in the SJV (''Agricultural Equipment Incentive Measure-Phase 1'') and proposed in our 2021 Proposed Rule to credit emission reductions of 4.46 tpd NO_X and 0.26 tpd direct $PM_{2.5}$ towards CARB's aggregate tonnage commitments.[194] CARB has estimated that it will achieve 4.9 tpd additional NO_X reductions, and 0.5 tpd additional direct $PM_{2.5}$ reductions through a second agricultural equipment incentive measure. In light of the Ninth Circuit Memorandum Opinion, and its finding that the EPA had not ensured that CARB and the District had a ''plausible strategy'' for achieving parts of the attainment strategy that relied on incentive-based reductions in the face of a budget shortfall for funding these measures, we must evaluate whether there is sufficient evidence in the record to establish a reasonable basis for concluding that any ''Phase 2'' agricultural equipment incentive measure will have sufficient funding to achieve the reductions ascribed to it.

As we noted in the EPA's 2021 Proposed Rule, fewer incentive-based emission reductions are needed to demonstrate attainment of the 2012 annual $PM_{2.5}$ NAAQS than were required in the portion of the SJV $PM_{2.5}$ Plan addressing the 2006 24-hour $PM_{2.5}$ NAAQS that was at issue in the *Medical Advocates* case.[195] In the Ninth Circuit Memorandum Opinion, the court pointed to a $2.6 billion shortfall between what the EPA calculated to be a need for $5 billion in funding and the more than $2 billion in funding that the State had ''identified or anticipated.''[196] Notably, funding for the Carl Moyer, California Assembly Bill 617, and FARMER programs were included in the ''identified or anticipated'' portion of the State's funding analysis, and not the ''incentive funding gap'' for which the Court found EPA's explanations justifying approval to be overly speculative.[197] Accordingly, we do not consider reliance on reductions from a Phase 2 agricultural equipment incentive measure to be prohibited by the Ninth Circuit Memorandum Opinion, to the extent that a Phase 2 rule would rely on the same, existing programs, and provided that evidence of sufficient identified or reasonably anticipated funding exists in the record.

As described in the EPA's analysis of the cost-effectiveness of the Agricultural Equipment Incentive Measure-Phase 1, based on information provided by CARB, the total project costs resulting in these emission reductions were $155 million for FARMER and $125 million for Carl Moyer, or $280 million combined.[198] As described in the EPA's 2021 Proposed Rule,[199] the SJV portion of the FARMER funding has typically been 80% of the State-wide allocation and the first three years of FARMER funding for the SJV were $108 million (fiscal year 2017–2018), $104.3 million (fiscal year 2018–2019), and $43.84 million (fiscal year 2019–2020).[200] For the current fiscal year (2021–2022), the District accepted $168.43 million in FARMER funds to replace agricultural equipment in the SJV.[201] Similarly, we noted that CARB expects Carl Moyer funding to increase in future years, following the enactment of California Assembly Bill 1274.[202]

Thus, while future funding allocations are subject to annual State and local funding cycles, given the renewed, large investment in the fiscal year 2021–2022 FARMER program, potential for increases in funding for the Carl Moyer program, and the success of these programs in meeting enforceability criteria for purposes of crediting emission reductions, the EPA anticipates that CARB will be able to develop an additional agricultural equipment incentive measure (''Agricultural Equipment Incentive measure-Phase 2'') that has funding levels comparable or larger than those for Phase 1 (*i.e.,* including the $168 million accepted by the District in March 2022) and that CARB's emission reduction estimates of 4.9 tpd NO_X and 0.5 tpd direct $PM_{2.5}$ by 2025, per the 2021 Progress Report, are reasonable and supported by identified or reasonably anticipated funding.

However, we have not yet taken final action on the NRCS portion of the Agricultural Equipment Incentive Measure-Phase 1 and, for this proposed rule, do not rely on the estimated emission reductions for that portion of the Agricultural Equipment Incentive Measure-Phase 1 (*i.e.,* 0.64 tpd NO_X and 0.04 tpd direct $PM_{2.5}$). Looking forward in time, this suggests some uncertainty regarding creditability of emission reductions from any portion of a Phase 2 agricultural equipment incentive measure that may be implemented through the NRCS program.

Furthermore, for any measure, to the extent that CARB or the District assumed a 100% rule effectiveness rate where the EPA is not able to confirm and approve such a rate, further discounts to the emission reductions estimated may be warranted in certain cases.[203] Accordingly, the overall remaining NO_X commitment could be larger than 6.01 tpd and the anticipated

[193] Heavy-Duty I/M ISOR and, for example, Heavy-Duty I/M ISOR, App. D (''Emissions Inventory Methods and Results, Proposed Heavy-Duty Inspection and Maintenance Regulation'') and App. H (''Proposed Heavy-Duty Inspection and Maintenance Regulation, Standardized Regulatory Impact Assessment'').

[194] 86 FR 74310, 74332; 86 FR 73106, 73109.

[195] 86 FR 74310, 74330. This is due to greater-than-expected reductions from committed to and substitute non-incentive regulatory measures, such as the Agricultural Burning Phase-Out Measure.

[196] *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #58–1, 7; 85 FR 44192, 44201.

[197] CARB Staff Report, 27 (Table 9).

[198] Memorandum dated June 22, 2020, from Rebecca Newhouse, EPA Region IX, to docket number EPA–R09–OAR–2019–0318, Subject: ''Cost-effectiveness of Emission Reductions from the Valley Incentive Measure and Estimated Future Funding Needs for Additional Agricultural Equipment Replacements'' (''EPA Cost-Effectiveness Memo'').

[199] 86 FR 74310, 74337.

[200] CARB, ''Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program, San Joaquin Valley APCD,'' as reported through September 30, 2020.

[201] SJVUAPCD, ''Item Number 9: Accept $168,425,600 in State FARMER Program Funds for Use in the District's Agricultural Equipment Replacement Project,'' March 17, 2022.

[202] 2021 Progress Report, 22.

[203] For example, the District originally sought SIP credit of 0.26 tpd direct $PM_{2.5}$ emission reductions from Rule 4901 and the EPA is proposing 0.2 tpd direct $PM_{2.5}$ based on a 75% rule effectiveness rate. Similarly, CARB and the District sought SIP credit of 1.04 tpd NO_X and 1.54 tpd direct $PM_{2.5}$ emission reductions from the Agricultural Burning Phase-out Measure and the EPA is proposing 0.83 tpd NO_X and 1.23 tpd direct $PM_{2.5}$ based on an 80% rule effectiveness rate.

excess emission reductions for direct $PM_{2.5}$ could be smaller than 0.86 tpd.

Notwithstanding some uncertainty as to the scale of emission reductions from the Heavy-Duty I/M and the Agricultural Equipment Incentive Measures (*i.e.,* assuming that the additional measures with discrete emission reduction estimates in the 2021 Progress Report achieve their respective emission reductions), there remains at least 6.65 tpd NO_X and 0.03 tpd direct $PM_{2.5}$ in CARB's commitment for which the record does not contain a specific and plausible strategy to achieve. In our 2021 Proposed Rule we discussed two possible ways that CARB could fill this gap: (1) additional reductions from committed or substitute measures named by CARB, and (2) a hypothetical inter-pollutant trading of excess direct $PM_{2.5}$ emission reductions by the District for any shortfall in NO_X emission reductions by CARB. The Ninth Circuit Memorandum Opinion has established that these concepts in the absence of a specific SIP revision are too speculative and do not constitute a ''plausible strategy'' for achieving this portion of the commitment.

With respect to additional reductions from committed measures, in the 2021 Proposed Rule, we explored potential reductions from two incentive-based measures: Accelerated Turnover of Trucks and Buses Incentive Projects, and Accelerated Turnover of Off-road Equipment Incentive Projects.[204] CARB initially estimated that they would achieve 8 tpd NO_X reductions from Accelerated Turnover of Trucks and Buses Incentive Projects, and 1.5 tpd NO_X reductions from Accelerated Turnover of Off-road Equipment Incentive Projects.[205] However, CARB did not propose a measure to its board for either measure by 2021, as it had committed to do, nor to our knowledge has CARB started the public process for enforceable measures to be submitted to the EPA for inclusion as control measures in the California SIP.

In the 2021 Progress Report, CARB acknowledged that many of the project lives do not span the attainment year[206] and, thus, while these projects accelerate emission reductions and benefit communities in the SJV, the projects that qualify for SIP credit may be limited for the purposes of the 2012 annual $PM_{2.5}$ NAAQS Serious area attainment demonstration. In our 2021 Proposed Rule, we acknowledged these weaknesses in these incentive programs, but we nonetheless assumed that these measures may ultimately result in SIP-creditable emission reductions for a portion of the combined 9.5 tpd NO_X.[207] In light of the Ninth Circuit Memorandum Opinion, the EPA does not consider it appropriate to rely on reductions that have been rendered substantially less likely to occur by the State's update indicating that few emissions from these projects may be creditable.

Furthermore, while the State continues to invest heavily in the replacement of older, dirty heavy-duty vehicles and equipment on a State-wide basis,[208] we are not aware of a document that identifies specific funding amounts applied to the replacement of such equipment in the SJV within the specific timeline of the Plan's demonstration of attainment of the 2012 annual $PM_{2.5}$ NAAQS by December 31, 2025. In brief, the amount of funding that is specific to the SJV for these two measures for purposes of attainment of the 2012 annual $PM_{2.5}$ NAAQS is unclear, and this renders more speculative at least a portion of the large scale of NO_X emission reductions originally anticipated.[209]

With respect to substitute measures under development, CARB points to the In-Use Locomotive Rule (and estimates emission reductions of 1.14 tpd NO_X and 0.03 tpd direct $PM_{2.5}$ by 2025 in the SJV), which is slated for 2022 Board consideration.[210] However, as noted in our 2021 Proposed Rule,[211] given the complexities involved in regulating locomotive emissions, we have conservatively excluded from our analysis the emission reduction estimates in the 2021 Progress Report for CARB's In-Use Locomotive Measure.

In addition, CARB has identified further measures that were not included in the original control measure commitments that may provide emission reductions toward CARB's aggregate tonnage commitments.[212] These measures include Cargo Handling Equipment Registration, Construction and Mining Equipment Measure, and Co-Benefits from the Climate Program. However, we do not have information as to what these measures might entail, when the State may adopt or implement them, and what scale of emission reductions they could potentially achieve.

Based on the lack of information on funding and process for heavy-duty and off-road equipment incentive-based measures and the lack of information on other potential substitute measures, such as a Construction and Mining Equipment Measure, and in light of the Ninth Circuit Memorandum Opinion, we have reconsidered our evaluation of this prospect and now propose that there is not sufficient evidence to show that the Valley State SIP Strategy contains a ''plausible strategy'' to achieve the remaining NO_X and direct $PM_{2.5}$ emission reductions needed for attainment.

The other approach that the 2021 Proposed Rule discusses for filling the gap in CARB's strategy for achieving its commitment is based on a hypothetical future SIP revision. In the 2021 Progress Report, CARB and the District provided additional emissions analysis to assess how excess direct $PM_{2.5}$ emission reductions could be converted to equivalent NO_X emission reductions using an inter-pollutant trading ratio rooted in the sensitivity analyses of the 2018 $PM_{2.5}$ Plan.[213] CARB and the District have not formally submitted this analysis as a SIP revision to the EPA or requested that the EPA apply such inter-pollutant trading for purposes of fulfilling the aggregate tonnage commitments through an equivalent amount of emission reductions.

Consistent with past EPA action on $PM_{2.5}$ planning SIP submissions for the SJV,[214] where the State submits a SIP

[204] 86 FR 74310, 74335.

[205] Valley State SIP Strategy, Table 7.

[206] 2021 Progress Report at 24 and 32. Generally, mobile source incentive projects implemented under the Carl Moyer program are under contract only during the ''project life'' and may not be credited with SIP emission reductions after the project life ends. EPA Region IX ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan California Air Resources Board Resolution 19–26 San Joaquin Valley Agricultural Equipment Incentive Measure,'' February 2020, 12–13.

[207] 86 FR 74310, 74335.

[208] See, *e.g.,* CARB, ''Proposed Fiscal Year 2021–22 Funding Plan for Clean Transportation Incentives, Appendix D: Long-Term Heavy-Duty Investment Strategy,'' release date October 8, 2021.

[209] The EPA also notes that, for regulatory measures that have large estimated emission reductions, rather than incentive-based measures, CARB estimated that its Low-Emission Diesel Fuel Requirement would achieve an additional 1 tpd NO_X and 0.1 tpd direct $PM_{2.5}$ reductions. However, without near-term adoption and submission, its associated emission reductions may not be creditable towards the aggregate tonnage commitment for 2025.

[210] 2021 Progress Report, 20–21. Additional information on CARB's regulatory concepts for the In-Use Locomotive Measure are available at: *https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california/locomotives-and-railyards-meetings-workshops.*

[211] 86 FR 74310, 74334, fn. 228.

[212] CARB, ''SJV $PM_{2.5}$ SIP Measure Tracking,'' September 2021, 3. Available at: *https://ww2.arb.ca.gov/resources/documents/2018-san-joaquin-valley-pm25-plan.*

[213] 2021 Progress Report, Table 4 and 33–37.

[214] For example, the EPA has approved an inter-pollutant trading mechanism for use in transportation conformity analyses for the 2006 24-hour $PM_{2.5}$ NAAQS. 85 FR 44192, 44204. In that same final rule, the EPA approved the State's demonstration that it had fulfilled prior aggregate tonnage commitments, in part, by using an inter-pollutant trading approach that the EPA found

revision that would substitute reductions in one pollutant to achieve a tonnage commitment concerning a different pollutant (*e.g.,* substituting excess direct $PM_{2.5}$ reductions to satisfy a NO_X reduction commitment), it must include an appropriate inter-pollutant trading (IPT) ratio and the technical basis for such ratio in the plan submission itself, along with the requisite public process. The EPA will review any such IPT ratio and its bases before approving or disapproving any such SIP revision. The possibility of a future SIP submission discussing IPT does not constitute a ''plausible strategy'' for achieving reductions that are modeled to result in attainment. Thus, at this time, we are not proposing to approve any particular inter-pollutant trading approach for purposes of meeting the aggregate tonnage commitments, nor applying any excess reductions of one pollutant towards fulfilling a portion of committed reductions of the other pollutant.

The additional evaluation we have discussed herein as part of our reconsideration of the State's enforceable commitments requires us to re-evaluate the EPA's three-factor test for enforceable commitments. Based on our reconsideration, and consistent with the Ninth Circuit Memorandum Opinion, we retain our proposed findings that the State's commitments meet the first factor (the commitment represents a limited portion of the required reductions, *i.e.,* 13.8% of the NO_X and 8.0% of the direct $PM_{2.5}$ emission reductions necessary to attain) and the third factor (the commitment is for a reasonable and appropriate timeframe) of the three-factor test. However, we now propose that the State's commitments do not meet the second factor (regarding the State's capability to fulfill its commitments). Our analysis and findings for the first and third factors are presented in section IV.F.3.e of the 2021 Proposed Rule. We provide our reconsidered evaluation of the second factor as follows in this proposed rule.

As the EPA noted in our 2021 Proposed Rule, CARB and the District have been capable of developing and adopting many of the regulatory measures listed in their respective control measure commitments. However, the question before us more precisely is whether such substantial progress, coupled with the strategy submitted by the State for achieving the remaining reductions which the State has modeled as leading to attainment, is sufficient to show that the State is capable of fulfilling its *entire* aggregate tonnage commitments by 2025. Several components of our reconsideration suggest that the State may not be capable of fulfilling the entire aggregate tonnage commitment, particularly with respect to NO_X emission reductions from additional CARB measures.

First, in terms of additional measures for which CARB and the District provided updated emission reduction estimates, we have given additional consideration to the evidence of emission reductions for two source categories that have large emission reduction estimates: Heavy-Duty I/M and the Agricultural Equipment Incentive Measures. For Heavy-Duty I/M, CARB has not provided to the EPA a sufficient basis for its increase in estimated emission reductions from 6.8 tpd NO_X to 14.7 tpd NO_X, where the 14.7 tpd reduction amounts to 7.1% of the total emission reductions modeled for attainment of the 2012 annual $PM_{2.5}$ NAAQS. Although the EPA is confident, based on its review, that emission reductions are available in this category, and that the State is capable of achieving some amount of reductions, the State has not sufficiently supported its assertion that it is capable of achieving 14.7 tpd of NO_X and 0.03 tpd of direct $PM_{2.5}$. As discussed above, due to uncertainty surrounding the NRCS portion of the Agricultural Equipment Incentive Measure-Phase 1, we are not relying on reductions from that portion of the rule, and the creditability of any NRCS portion of a potential future Phase 2 has not been established.

Furthermore, for any measure, to the extent that CARB or the District assumed a 100% rule effectiveness rate where the EPA is not able to confirm and approve such a rate, further discounts to the emission reduction estimates may be warranted in certain cases.

Accordingly, the overall remaining NO_X commitment could be larger than 6.01 tpd and the anticipated excess emission reductions for direct $PM_{2.5}$ could be smaller than 0.86 tpd.

Second, even if the EPA were to assume maximum credit for the additional measures for which CARB and the District provided updated emission reduction estimates, CARB, in combination with the District, would still need emission reductions of at least 6 tpd NO_X to fulfill its commitments.[215] Moreover, the reductions from CARB's remaining incentive measures for Heavy-Duty vehicles and off-road equipment appear to be limited relative to the combined emission reduction estimate of 9.5 tpd NO_X in the Plan. Without documentation supporting the funding amounts to be applied in the SJV within the timeline of the 2012 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan, it is not clear that the full amount of these estimated reductions is supported by a ''plausible strategy'' to achieve them, as required in the Ninth Circuit Memorandum Opinion. In addition, the identified substitute measures lack sufficient detail to provide support for making up for NO_X emission reduction shortfalls from CARB's control measure commitments.

Given the gap between the reductions needed and the reductions for which CARB and the District have presented a non-speculative plan for achieving, we now propose that the State has not demonstrated that it is capable of fulfilling the remaining aggregate tonnage commitments necessary to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025, and therefore find that the SJV $PM_{2.5}$ Plan does not meet the second factor of our three-factor test for enforceable commitments.

b. Attainment Demonstration

Based on our reconsideration of the Plan's enforceable commitments described in section II.C.3.a of this proposed rule, and our reconsideration of the Plan's BACM demonstration for described in section II.B, we now propose to disapprove the SJV $PM_{2.5}$ Plan's modeled attainment demonstration for the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025. We discuss the interrelationship of these nonattainment plan elements as follows.

Regarding enforceable commitments, CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act].'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The EPA interprets the CAA to allow for approval of enforceable commitments that are limited in scope, where circumstances exist that warrant the use of such commitments in place of

adequate. 85 FR 44192, 44205; see also proposed rule at 85 FR 17382, 17406–17407 and associated EPA's General Evaluation TSD, Table III–C and section IV.

[215] As noted in this proposed rule, if the EPA were to assume credit for emission reductions from the additional District measures, the District would have exceeded its aggregate tonnage commitments by 0.64 tpd NO_X and 0.89 tpd direct $PM_{2.5}$.

adopted and submitted measures, and considers three factors in determining whether to approve the enforceable commitment.

Given our proposed finding above that the State has not met the second factor of the EPA's three-factor test (*i.e.,* whether the State is capable of fulfilling its commitment), the State is left with a gap between the reductions that it has modeled as necessary for attainment, and the reductions that the EPA may count as constituting the State's control plan. Therefore, the EPA proposes that the State's control strategy does not include sufficient enforceable measures, pursuant to CAA sections 110(a)(2)(A) and 172(c)(6), to achieve the necessary emission reductions to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV by December 31, 2025.

The lack of an approved control plan to achieve the reductions necessary to attain by 2025 is sufficient on its own to compel disapproval of the attainment demonstration. However, even if the State's control plan was sufficient to lead to attainment in 2025, the Public Justice Comment Letter and our reconsidered BACM analysis in section II.B of this notice raise additional issues regarding the sufficiency of the modeled attainment demonstration.

The State's attainment demonstration identifies the Bakersfield-Planz monitor as the design value monitor, and models this monitor as achieving the 12.0 μg/m^3 concentration necessary for attainment in 2025.[216] The State's submission also indicates that the Bakersfield-Planz monitor is modeled to read 12.1 μg/m^3 in 2024.[217] This represents a very narrow margin between modeled attainment in 2024 and 2025. In light of the Act's requirement to demonstrate attainment by the most expeditious date practicable, in order for the EPA to approve the Plan's demonstration that the area will attain by 2025, the State must also demonstrate that attainment by an earlier date is not practicable.

As explained in section II.B of this notice, the EPA now proposes to find that the State has not sufficiently demonstrated that it has implemented BACM for all necessary categories of sources. Most notably, the State has not sufficiently evaluated the amount of ammonia reductions that may be available. In light of the very small (0.1 μg/m^3) gap between attaining in 2024 and 2025, and the State's sensitivity modeling in its precursor demonstration indicating that a 30% reduction in ammonia would reduce annual $PM_{2.5}$ concentrations at the Bakersfield-Planz monitor by 0.12 μg/m^3 and a 70% reduction would reduce annual $PM_{2.5}$ concentrations at the Bakersfield-Planz monitor by 0.36 μg/m^3, the State has not demonstrated that reductions from sources identified in section II.B could not expedite attainment.[218] As a result, even if the State's control plan was sufficiently concrete that the EPA could credit all reductions of NO_X and direct $PM_{2.5}$ that the State indicated that it intended to use to fulfill its aggregate commitments, the State is still required to demonstrate that the selected attainment year (*e.g.,* 2025) is as expeditious as practicable considering potential emission reductions from all plan precursors, including ammonia.

The EPA emphasizes that it is stating both that the Plan does not demonstrate that the SJV will attain by 2025 and that the State has not demonstrated that it could not attain sooner than 2025. These findings are not in tension with one another. Under the Act, the State must demonstrate that its control plan will be sufficient to attain the NAAQS, and to attain the NAAQS by the most expeditious date practicable. The State's failure to demonstrate that it could not attain sooner than 2025 is not inconsistent with the State also having other analytical or substantive flaws in its control plan to attain by 2025. The EPA is not proposing to find that the SJV can practicably attain by 2024, nor is the EPA proposing to find that the SJV could not possibly attain by 2025. Instead, the EPA is proposing, in light of the uncertainty regarding ammonia controls, to find that the State has failed to demonstrate that it could not practicably attain before 2025, and in light of identified deficiencies in the control plan, that the State's control strategy for attaining by 2025 is flawed.

Furthermore, for the 1997 annual $PM_{2.5}$ NAAQS, on November 8, 2021, the State submitted the ''Attainment Plan Revision for the 1997 Annual $PM_{2.5}$ Standard,'' which was adopted by the District on August 19, 2021, and by CARB on September 23, 2021 (''15 μg/m^3 SIP Revision''). In that submission, the State updated its prior air quality modeling to account for more recent monitored air quality data. Specifically, the State estimated 2023 annual average concentrations starting from a 2018 monitored base year (*i.e.,* rather than a 2013 base year, in order to reflect updated monitored air quality data), and applied updated, scaled relative response factors (RRFs) to reflect emissions changes between 2018 and 2023.[219] Because this scaling indicated a significant change in the modeling results for the 1997 annual $PM_{2.5}$ NAAQS, and the modeling for the 2012 annual $PM_{2.5}$ NAAQS relies on many of the same models and assumptions, the result of the scaling analysis introduces additional uncertainty to the modeled attainment demonstration for the 2012 $PM_{2.5}$ NAAQS. Accordingly, we recommend updated modeling analysis for the 2012 annual $PM_{2.5}$ NAAQS.

As a result of our proposed disapproval of the control plan and the uncertainty regarding additional reductions that could be achieved by further BACM/BACT level controls for all appropriate plan precursors (particularly for ammonia), we now propose to disapprove the attainment demonstration for the 2012 annual $PM_{2.5}$ NAAQS.

D. Reasonable Further Progress Demonstration and Quantitative Milestones

1. Summary of 2021 Proposed Rule

In section IV.G of our 2021 Proposed Rule, the EPA described the requirements for RFP and quantitative milestones for a Serious $PM_{2.5}$ nonattainment area, summarized the State's submission in the 2018 $PM_{2.5}$ Plan for the SJV, and presented our evaluation thereof.[220] We briefly summarize those components here and rely on the more complete exposition in that proposed rule, except as described in section II.D.2 of this proposed rule (*i.e.,* the EPA's reconsidered proposal for RFP and quantitative milestones).

Regarding requirements, CAA section 172(c)(2) provides that all nonattainment area plans shall require RFP toward attainment. In addition, CAA section 189(c) requires that all $PM_{2.5}$ nonattainment area plans contain quantitative milestones for purposes of measuring RFP, as defined in CAA section 171(1), every three years until the EPA redesignates the area to attainment. Section 171(1) of the Act defines RFP as the annual incremental reductions in emissions of the relevant air pollutant as are required by part D, title I of the Act, or as may reasonably be required by the Administrator for the purpose of ensuring attainment of the

[216] 2018 $PM_{2.5}$ Plan, App. K, Table 39.

[217] Id. at Table 33.

[218] See 2018 $PM_{2.5}$ Plan, App. G, tables 4 through 7.

[219] 15 μg/m^3 SIP Revision, Ch. 5, 5–9 to 5–12. See also 15 μg/m^3 SIP Revision, App. K, 64–65. In the 15 μg/m^3 SIP Revision, the State used existing modeling runs for 2020 and 2024 to compute RRFs for each $PM_{2.5}$ component using the standard approach recommended in the EPA's Modeling Guidance. Those RRFs were then scaled to reflect emissions changes between 2018 and 2023 to arrive at updated RRFs.

[220] 86 FR 74310, 74338–74345.

NAAQS by the applicable attainment date.

In addition to the EPA's longstanding guidance on the RFP requirements for PM, the Agency has established specific regulatory requirements for the $PM_{2.5}$ NAAQS in the $PM_{2.5}$ SIP Requirements Rule for purposes of satisfying the Act's RFP requirements and provided related guidance in the preamble to the rule. Specifically, under the $PM_{2.5}$ SIP Requirements Rule, for a $PM_{2.5}$ attainment plan a State must include an RFP analysis that includes, at minimum, the following four components: (1) an implementation schedule for control measures; (2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated control measure implementation schedule; (3) a demonstration that the control strategy and implementation schedule will achieve reasonable progress toward attainment between the base year and the attainment year; and (4) a demonstration that by the end of the calendar year for each triennial milestone date for the area, pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year.[221] Additionally, states should estimate the RFP projected emissions for each quantitative milestone year by sector on a pollutant-by-pollutant basis.[222]

Section 189(c) of the Act requires that $PM_{2.5}$ attainment plans include quantitative milestones that demonstrate RFP. The purpose of the quantitative milestones is to allow periodic evaluation of the State's progress towards attainment of the $PM_{2.5}$ NAAQS in the area consistent with RFP requirements. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a State demonstrates compliance with the quantitative milestone requirement, it should also demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward attainment meaningfully, *e.g.,* through imposition of emissions controls in the attainment plan and the requirement to quantify those required emissions reductions on the schedule approved by the EPA and thus required to meet RFP.

As we noted in the 2021 Proposed Rule, the CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and General Preamble Addendum, the EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[223] Consistent with this longstanding interpretation of the Act, the $PM_{2.5}$ SIP Requirements Rule requires that each plan for a Serious $PM_{2.5}$ nonattainment area that demonstrates attainment by the end of the 10th calendar year following the date of designation contain quantitative milestones to be achieved no later than milestone dates 7.5 years and 10.5 years from the date of designation of the area.[224] The 2018 $PM_{2.5}$ Plan includes a demonstration designed to show attainment by the end of the 10th calendar year following designations (*i.e.,* December 31, 2025). Because the EPA designated the SJV nonattainment for the 2012 annual $PM_{2.5}$ NAAQS effective April 15, 2015,[225] the applicable quantitative milestone dates for purposes of the submitted Serious area plan for this NAAQS in the SJV are October 15, 2022, and October 15, 2025.

Quantitative milestones must provide for objective evaluation of reasonable further progress toward timely attainment of the $PM_{2.5}$ NAAQS in the area and include, at minimum, a metric for tracking progress achieved in implementing SIP control measures, including BACM and BACT, by each milestone date.[226]

The State presents its RFP demonstration and quantitative milestones for the 2012 annual $PM_{2.5}$ NAAQS in Appendix H of the 2018 $PM_{2.5}$ Plan. Following the identification of a transcription error in the RFP tables of Appendix H, the State submitted a revised version of Appendix H that corrects the transcription error and provides additional information on the RFP demonstration.[227] Given the State's conclusions that ammonia, SO_X, and VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 annual $PM_{2.5}$ NAAQS in the SJV, the RFP demonstration provided by the State only addresses emissions of direct $PM_{2.5}$ and NO_X.[228] Similarly, the State developed quantitative milestones based upon the Plan's control measure strategy to achieve emission reductions of direct $PM_{2.5}$ and NO_X.[229]

For the 2012 annual $PM_{2.5}$ NAAQS, the RFP demonstration in the Plan follows a stepwise approach due to the time required for CARB and the District ''to amend rules, develop programs, and implement the emission reduction measures.'' [230] The revised Appendix H provides clarifying information on the RFP demonstration, including additional information to justify the Plan's stepwise approach to demonstrating RFP. This clarifying information did not affect the Plan's quantitative milestones. It is important to note that the State evaluated what would be necessary for purposes of meeting RFP premised upon its approach to regulating only direct $PM_{2.5}$ and NO_X emissions, and upon a December 31, 2025 attainment date that itself depended upon the State achieving certain additional emission reductions though the enforceable commitments.

In our 2021 Proposed Rule we further described the State's RFP demonstration and quantitative milestones in the SJV $PM_{2.5}$ Plan, including, for example, the anticipated implementation schedule for CARB and District control measures, projected emissions for each RFP year and attainment year, and percent reductions to be achieved in each milestone year, which would be consistent with a stepwise approach. We noted that the reductions between the 2013 base year and 2019 milestone year are consistent with generally linear progress toward the targeted attainment date, while the reductions by the 2022 milestone year would fall short of the rate of reductions to show generally linear RFP. We also noted that the State relies on more substantial direct $PM_{2.5}$ and NO_X emission reductions by January 1, 2025, due in large part to CARB and the District's reliance on enforceable commitments to achieve additional $PM_{2.5}$ and NO_X emission reductions from new measures implemented by 2024. Lastly, we noted the State's overall conclusion that the adopted control strategy and additional commitments for reductions from new control programs by this time are adequate to meet the RFP requirement for the 2012 annual $PM_{2.5}$ NAAQS with

[221] 40 CFR 51.1012(a).

[222] 81 FR 58010, 58056.

[223] General Preamble, 13539 and General Preamble Addendum, 42016.

[224] 40 CFR 51.1013(a)(2)(i).

[225] 80 FR 2206.

[226] 81 FR 58010, 58064 and 58092.

[227] Appendix H to 2018 $PM_{2.5}$ Plan, submitted February 11, 2020, via the EPA State Planning Electronic Collaboration System. This revised version of Appendix H replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019. All references to Appendix H in this proposed rule are to the revised version of Appendix H submitted February 11, 2020.

[228] 2018 $PM_{2.5}$ Plan, App. H, H–1.

[229] Id. at App. H, H–23 to H–24 (for CARB milestones) and H–20 to H–22 (for District milestones).

[230] Id. at App. H, H–4.

the projected attainment date of December 31, 2025.

Regarding quantitative milestones, Appendix H of the 2018 $PM_{2.5}$ Plan identifies October 15 milestone dates for the 2019 and 2022 RFP milestone years, the 2025 attainment year, and a post-attainment milestone year of 2028.[231] Appendix H also identifies target emissions levels to meet the RFP requirement for direct $PM_{2.5}$ and NO_X emissions for each of these milestone years,[232] as shown in Table 6 of our 2021 Proposed Rule, and control measures that CARB and the District already have in place or plan to implement by each of these years, in accordance with the control strategy in the Plan.[233]

We noted, however, that while quantitative milestones are required for 2019 in the context of the Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV (corresponding to the 4.5 years after the date of designation), we have already evaluated and approved the State's quantitative milestones for 2019, as supplemented by the 2018 $PM_{2.5}$ Plan.[234] Therefore, the EPA is not evaluating the 2019 milestones for purposes of the State's Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

Although the State's attainment demonstration for the 2012 annual $PM_{2.5}$ NAAQS does not rely on CARB's and the District's control measure commitments for emission reductions until 2024,[235] the RFP and quantitative milestone elements of the 2018 $PM_{2.5}$ Plan rely on these control measure commitments to demonstrate that the plan requires RFP toward attainment.[236] In our 2021 Proposed Rule we summarized the specific milestones identified by the State for each milestone year and with respect to the control measure commitments in each three-year period.

The EPA presented its evaluation of the State's RFP demonstration and quantitative milestones in section IV.G.3 of the 2021 Proposed Rule, with additional information in section V of the EPA's 2012 Annual $PM_{2.5}$ TSD. We previously proposed to approve the State's RFP demonstration and quantitative milestones.

2. The EPA's Reconsidered Proposal

As discussed in section II.C.3, we are now proposing to disapprove the attainment demonstration for the Serious area plan portion of the 2018 $PM_{2.5}$ Plan for the 2012 annual $PM_{2.5}$ NAAQS because we are proposing to not approve the State's control plan to achieve the reductions modeled for 2025 and the attainment demonstration does not demonstrate that the SJV could not practicably attain before 2025. The RFP demonstration in the Plan is deficient because it sets out a timeline for implementing the deficient control plan, which is not sufficient to ''ensure attainment'' under CAA section 171(l). The quantitative milestones do not ''demonstrate [RFP] toward attainment by the applicable date'' under CAA section 189(c), both because the Plan does not sufficiently demonstrate that the control plan will result in attainment, and because the plan does not sufficiently establish what the applicable date should be.[237] As a result, the EPA proposes to disapprove the Plan's Serious area RFP demonstration and quantitative milestones for the 2012 annual $PM_{2.5}$ NAAQS.

E. Motor Vehicle Emission Budgets

1. Summary of 2021 Proposed Rule

In section IV.I of our 2021 Proposed Rule, the EPA described the requirements for motor vehicle emission budgets (''budgets'') for a Serious $PM_{2.5}$ nonattainment area, summarized the State's submission in the 2018 $PM_{2.5}$ Plan for the SJV, and presented our evaluation thereof.[238] We briefly summarize those components here and rely on the more complete exposition in that proposed rule, except as described in section II.E.2 of this proposed rule (*i.e.,* the EPA's reconsidered proposal for budgets).

Section 176(c) of the CAA requires federally funded or approved actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the NAAQS. Conformity to the SIP's goals means that such actions will not: (1) cause or contribute to new violations of a NAAQS; (2) increase the frequency or severity of an existing violation; or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A (''Transportation Conformity Rule''). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with State and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's regional transportation plan (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. The MPO's demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the applicable budgets contained in adequate or approved control strategy implementation plans. An attainment plan for the $PM_{2.5}$ NAAQS should include budgets for the attainment year and each required RFP milestone year for direct $PM_{2.5}$ and $PM_{2.5}$ precursors subject to transportation conformity analyses. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[239]

In our 2021 Proposed Rule, we described how states should identify budgets for direct $PM_{2.5}$, NO_X, and all other $PM_{2.5}$ precursors for which the State and/or the EPA has determined that on-road emissions significantly contribute to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year if the plan demonstrates attainment.[240] All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear.

We described the process by which the State and the EPA should determine

[231] 2018 $PM_{2.5}$ Plan, App. H, Table H–12.

[232] Id. at Table H–5.

[233] Id. at H–23 to H–24 (for CARB milestones) and H–20 to H–22 (for District milestones).

[234] 86 FR 67343, 67346.

[235] 2018 $PM_{2.5}$ Plan, Ch. 4, Table 4–3 (''Emission Reductions from District Measures'') and Table 4–9 (''San Joaquin Valley Expected Emission Reductions from State Measures'').

[236] 2018 $PM_{2.5}$ Plan, App. H, H–4 to H–10 (describing commitments by CARB and SJVUAPCD to adopt additional measures to fulfill tonnage commitments for 2024 and 2025, including ''action'' and ''implementation'' dates occurring before 2024 to ensure expeditious progress toward attainment).

[237] In addition, as discussed in section II.C.3.a of this proposed rule, the EPA notes that of the State's 27 control measure commitments, four regulatory measures and four incentive-based measures are overdue (*i.e.,* were due for board consideration in 2020 or 2021). It is not clear, based on the evidence before the EPA, that such measures will be presented to the CARB and District boards in the 2022 calendar year. Furthermore, to the extent the State relies on substitute measures to ultimately fulfill its aggregate tonnage commitments in 2025 (*e.g.,* the Agricultural Burning Phase-out Measure), the State has not provided quantitative milestones as part of a SIP revision that would provide for periodic evaluation of the State's progress in implementing such substitute measures. In addition, the State has not provided quantitative milestones for ammonia.

[238] 86 FR 74310, 74347–74351.

[239] 40 CFR 93.118(e)(4)(v).

[240] 40 CFR 93.102(b)(2)(iv) and (v).

whether other pollutant emissions (*i.e.,* for re-entrained road dust, VOC, SO_2, and ammonia) contribute significantly to the $PM_{2.5}$ nonattainment problem, either with respect to the whole plan or with respect to on-road mobile emissions, and therefore be subject to the transportation conformity requirements (*i.e.,* budgets for such pollutant(s) must be included in the plan). We further noted that transportation conformity trading mechanisms are allowed under 40 CFR 93.124 where a State establishes appropriate mechanisms for such trades and where the basis for the trading mechanism is the SIP attainment modeling that establishes the relative contribution of each $PM_{2.5}$ precursor pollutant.

The EPA's process for determining the adequacy of a budget consists of three basic steps: (1) notifying the public of a SIP submittal; (2) providing the public the opportunity to comment on the budgets during a public comment period; and (3) making a finding of adequacy or inadequacy.[241] The EPA can notify the public by either posting an announcement on the EPA's adequacy website notifying the public that the EPA has received a SIP submission that will be reviewed to determine if the budgets in that submission are adequate for transportation conformity purposes (40 CFR 93.118(f)(1)), or through a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of submitted motor vehicle emission budgets simultaneously with its review and action on the SIP itself (40 CFR 93.118(f)(2)).

The State includes budgets for direct $PM_{2.5}$ and NO_X emissions for the 2019 and 2022 RFP milestone years, the projected attainment year (2025), and one post-attainment year quantitative milestone (2028) in the 2018 $PM_{2.5}$ Plan.[242] The State establishes separate direct $PM_{2.5}$ and NO_X subarea budgets for each county, or partial county (for Kern County), in the SJV.[243] CARB calculated the budgets using EMFAC2014,[244] which was, at the time, CARB's latest version of the EMFAC model for estimating emissions from on-road vehicles operating in California that had been approved by EPA at the time of Plan development, and the latest modeled vehicle miles traveled and speed distributions from the SJV MPOs from the Final 2017 Federal Transportation Improvement Programs, adopted in September 2016. The budgets reflect annual average emissions consistent with the annual averaging period of the 2012 annual $PM_{2.5}$ NAAQS and the 2018 $PM_{2.5}$ Plan's RFP demonstration.

In our 2021 Proposed Rule, the EPA noted the following: (1) 2022 and 2025 are the required budget years applicable to the Serious area plan portion of the 2018 $PM_{2.5}$ Plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV (and that the attainment year of 2025 coincided with the latter milestone year based on timing of designations); (2) the EPA had approved the budgets for the 2022 RFP milestone year in acting on the Moderate area plan and, therefore, will not be acting on them again in acting on the Serious area plan;[245] (3) the EPA is not evaluating the 2019 budgets, which would neither be used in any future conformity determinations (as the plan contains budgets for 2022 and other future years), nor required for the submitted Serious area plan; and (4) the EPA would begin the motor vehicle emissions budget adequacy and approval review processes for the 2028 post-attainment milestone year budgets only if the area were to fail to attain the standard by December 31, 2025 (the applicable Serious area attainment date if the EPA were to finalize approval of the 2018 $PM_{2.5}$ Plan's attainment demonstration).

The Plan's direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions but do not include paved road dust, unpaved road dust, and road construction dust emissions.[246] The State did not include budgets for VOC, SO_2, or ammonia, consistent with its precursor demonstration that control of these precursors would not significantly contribute to attainment of the 2012 annual $PM_{2.5}$ NAAQS. The State also included a discussion of the significance/insignificance factors for motor vehicle emissions of ammonia, SO_2, and VOC to support a finding of insignificance under the transportation conformity rule.[247] The State is not required to include re-entrained road dust in the $PM_{2.5}$ budgets under section 93.103(b)(3) unless the EPA or the State has made a finding that these emissions are significant, and neither the State nor the EPA has made such a finding. Nevertheless, the Plan includes a discussion of the significance/insignificance factors for re-entrained road dust and concludes that such emissions are insignificant.[248] The budgets included in the 2018 $PM_{2.5}$ Plan are shown in Table 3 of this proposed rule, which is identical to Table 9 of our 2021 Proposed Rule.

TABLE 3—MOTOR VEHICLE EMISSION BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 2012 $PM_{2.5}$ STANDARD

[Annual average, tpd]

County	2022 (RFP year) [a]		2025 (attainment year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	21.2	0.8	14.3
Kern	0.8	19.4	0.8	12.8
Kings	0.2	4.1	0.2	2.7
Madera	0.2	3.5	0.2	2.3
Merced	0.3	7.6	0.3	5.0
San Joaquin	0.6	10.0	0.6	6.9
Stanislaus	0.4	8.1	0.4	5.6
Tulare	0.4	6.9	0.4	4.7

Source: 2018 $PM_{2.5}$ Plan, Appendix D, Table 3–3. Budgets are rounded to the nearest tenth of a ton.

[241] 40 CFR 93.118(f).

[242] 2018 $PM_{2.5}$ Plan, App. D, Table 3–3.

[243] 40 CFR 93.124(c) and (d).

[244] EMFAC is short for *EM*ission *FAC*tor. The EPA announced the availability of the EMFAC2014 model for use in State implementation plan development and transportation conformity in California on December 14, 2015. The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**.

[245] 86 FR 67343, 67346.

[246] 2018 $PM_{2.5}$ Plan, App. D, D–122 to D–123.

[247] 40 CFR 93.109(f).

[248] 2018 $PM_{2.5}$ Plan, App. D, D–121.

[a] The EPA has already approved the 2022 RFP budgets in our final rule on the State's Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

In our 2021 Proposed Rule, we also described the State's proposed trading mechanism in the 2018 $PM_{2.5}$ Plan for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in direct $PM_{2.5}$ emissions.

We presented our evaluation of the State's Serious area budgets for the 2012 annual $PM_{2.5}$ NAAQS in the SJV and proposed to approve the 2025 budgets. We noted our preliminary review of the budgets submitted for adequacy, which preceded our proposed approval of the budgets, consistent with the EPA's general process. Based on information in the Plan, we proposed that budgets were not required for SO_2, VOC, and ammonia.

Based on our proposed approval of the State's RFP and attainment demonstrations, and our review of the budgets in the Plan, we proposed that the 2025 budgets for RFP and attainment were consistent with those demonstrations, were clearly identified and precisely quantified, and met all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We provided a more detailed discussion of the budgets in section VI of the EPA's 2012 Annual $PM_{2.5}$ TSD. We noted that our proposed approval of the budgets for the 2012 annual $PM_{2.5}$ NAAQS did not affect the status of the previously approved budgets for the 1997 $PM_{2.5}$ NAAQS and related trading mechanism, which remain in effect for that $PM_{2.5}$ NAAQS, nor the 2006 24-hour $PM_{2.5}$ NAAQS and related trading mechanism, which remain in effect for that $PM_{2.5}$ NAAQS.[249]

Based on our review of the State's trading mechanism for transportation conformity analyses for the 2012 annual $PM_{2.5}$ NAAQS, the EPA previously proposed to approve the trading mechanism, which would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a 6.5:1 NO_X:$PM_{2.5}$ ratio.[250] To ensure that the trading mechanism does not affect the ability to meet the NO_X budget, we noted the following: (1) the Plan provides that the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met; (2) the SJV MPOs would have to document clearly the calculations used in the trading when demonstrating conformity, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis; and (3) the trading calculations must be performed prior to the final rounding to demonstrate conformity with the budgets. We summarized the technical bases for our proposed approval of the trading mechanism in the 2021 Proposed Rule and in section VI of the EPA's 2012 Annual $PM_{2.5}$ TSD.

Regarding the duration of budgets for the 2012 annual $PM_{2.5}$ NAAQS, the EPA noted that once budgets are approved, they cannot be superseded by revised budgets submitted for the same CAA purpose and the same year(s) addressed by the previously approved SIP until the EPA approves the revised budgets as a SIP revision. While CARB had requested in its letter submitting the 2018 $PM_{2.5}$ Plan that the EPA limit the duration of the budgets (*i.e.,* to allow an adequacy finding, rather than approval, of future SIP revision of budgets to replace the initial budgets),[251] CARB later clarified that since they have submitted EMFAC2021 for EPA review, they no longer request that we limit the duration of our approval.[252]

Lastly, in our 2021 Proposed Rule, the EPA proposed to disapprove the contingency measure element of the 2018 $PM_{2.5}$ Plan with respect to the Serious area requirements for the 2012 annual $PM_{2.5}$ NAAQS, and we are not modifying our proposed action on contingency measures in this proposed rule. Accordingly, we noted that if the EPA were to finalize the proposed disapproval of the 2012 annual $PM_{2.5}$ NAAQS Serious area contingency measure element, the area would be eligible for a protective finding under the transportation conformity rule because the 2018 $PM_{2.5}$ Plan reflects adopted control measures that fully satisfy the emissions reductions requirements for the RFP and attainment year of 2025.[253]

2. The EPA's Reconsidered Proposal

Based on the EPA's reconsideration and proposed disapprovals of the attainment and RFP demonstrations discussed herein, we have reconsidered our proposed approval of the Serious area budgets for the 2012 annual $PM_{2.5}$ NAAQS in the SJV. As discussed below, the EPA now proposes to disapprove the 2025 RFP and attainment year budgets.

As noted in section I.B of this proposed rule, we are not re-proposing any action on the Plan's precursor demonstrations for SO_X and VOC (*i.e.,* we retain our proposed approval that SO_X and VOC are not plan precursors for the 2012 annual $PM_{2.5}$ NAAQS in the SJV, and therefore SO_2 and VOC budgets would not be required, consistent with the transportation conformity regulation (40 CFR 93.102(b)(2)(v))). However, as discussed in section II.A.3 of this proposed rule, the EPA now proposes to disapprove the State's precursor demonstration that ammonia does not significantly contribute to exceedances of the 2012 annual $PM_{2.5}$ NAAQS in the SJV, and therefore the Plan's precursor demonstration would not address the State's obligation to consider whether ammonia budgets are necessary in the Serious area plan.

In the Plan, the State provides a discussion of the significance/insignificance factors for motor vehicle emissions of ammonia (and SO_2 and VOC), which would demonstrate a finding of insignificance under the transportation conformity rule.[254] The factors typically addressed for significance include an examination of the on-road contribution of ammonia to the total emissions, and the likelihood of future motor vehicle emission controls. We note that annual average ammonia emissions from on-road mobile sources are an estimated 3.4 tpd of a total of 324.3 tpd from all sources in 2025, or about 1% of the total ammonia emissions.[255] Based on our

[249] 76 FR 69896, 69923–69924 (November 9, 2011) (final rule approving direct $PM_{2.5}$ and NO_X budgets for 2012 and 2014 for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS); and 85 FR 44192, 44204 (final rule approving direct $PM_{2.5}$ and NO_X budgets for 2020, 2023, and 2024 for the 2006 24-hour $PM_{2.5}$ NAAQS); and 86 FR 53150, 53176–53179 (September 24, 2021) (proposed rule to approve budgets from the 2018 $PM_{2.5}$ Plan for direct $PM_{2.5}$ and NO_X for 2017 and 2020 for the 1997 24-hour $PM_{2.5}$ NAAQS). We note that, following our 2021 Proposed Rule on the 2012 annual $PM_{2.5}$ NAAQS portion of the Plan, the EPA finalized approval of the 2017 and 2020 budgets for the 1997 24-hour $PM_{2.5}$ NAAQS portion of the Plan. 87 FR 4503.

[250] For example, a 1 tpd excess of direct $PM_{2.5}$ emissions from on-road mobile sources in 2025 could be offset by a 6.5 tpd reduction in NO_X emissions below the NO_X budget for on-road mobile sources in 2025.

[251] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, 3.

[252] Email dated November 30, 2021, from Nesamani Kalandiyur, Manager, Transportation Analysis Section, Sustainable Transportation and Communities Division, CARB, to Karina O'Connor, EPA Region IX.

[253] 40 CFR 93.120(a)(3).

[254] For the criteria and procedures for demonstrating a finding of insignificance under the transportation conformity rule, see 40 CFR 93.109(f).

[255] 2018 $PM_{2.5}$ Plan, App. B, Table B–5.

review, and the small contribution of ammonia emissions from on-road mobile sources, the EPA agrees with the State's finding that on-road mobile source emissions of ammonia are insignificant and therefore the State is not required to include budgets for ammonia in its Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS in the SJV.

With respect to the 2025 RFP and attainment year, the EPA proposes to disapprove the direct $PM_{2.5}$ and NO_X budgets for 2025, as follows. While the 2025 budgets for RFP and attainment were clearly identified and precisely quantified, in this proposed rule the EPA proposes to disapprove the State's Serious area RFP and attainment demonstrations for the 2012 annual $PM_{2.5}$ NAAQS.[256] The EPA cannot approve budgets where the underlying CAA requirements (*i.e.,* RFP and attainment) are disapproved and therefore proposes to disapprove the 2025 budgets. The budgets, when considered together with all other emission sources, cannot be consistent with the applicable requirements for RFP and attainment of the 2012 annual $PM_{2.5}$ NAAQS given the proposed disapprovals of the RFP and attainment demonstrations. Therefore, we are proposing to disapprove the motor vehicle emissions budgets because they do not meet applicable statutory and regulatory requirements, including the adequacy criteria specified in the transportation conformity rule.[257] If the EPA finalizes the disapproval, the EPA would concurrently withdraw the adequacy finding for the 2025 RFP and attainment year motor vehicle emission budgets.[258]

Lastly, given that we now propose to disapprove the Plan's RFP and attainment demonstrations for the 2012 annual $PM_{2.5}$ NAAQS, rather than just the Serious area contingency measure element alone (as described in our 2021 Proposed Rule), the SJV would not be eligible for a protective finding under the transportation conformity rule because the 2018 $PM_{2.5}$ Plan's control measures do not fully satisfy the emissions reductions requirements for the RFP and attainment year of 2025.[259]

As a result, if the EPA finalizes our proposed disapproval of the budgets, upon the effective date of our final rule the area would be subject to a conformity freeze under 40 CFR 93.120 of the transportation conformity rule. No new transportation plan, TIP, or project may be found to conform until the State submits another control strategy implementation plan revision fulfilling the same CAA requirements, the EPA finds the budgets in the revised plan adequate or approves the budgets, the MPO makes a conformity determination for the new budgets, and the U.S. Department of Transportation makes a conformity determination.[260] In addition, only transportation projects outside of the first four years of the current conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during the resulting conformity freeze may be found to conform until California submits a new attainment and RFP plan for the 2012 annual $PM_{2.5}$ NAAQS and (1) the EPA finds the submitted budgets adequate per 40 CFR 93.118 or (2) the EPA approves the new attainment plan and conformity to the new plan is determined.[261] Furthermore, if, as a result of our final disapproval action, the EPA imposes highway sanctions under section 179(b)(1) of the Act two years from the effective date of our final rule, then the conformity status of the transportation plan and TIP will lapse on that date and no new transportation plan, TIP, or project may be found to conform until California submits a new plan for the 2012 annual $PM_{2.5}$ NAAQS, and conformity to the plan is determined.[262]

III. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal Government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in underserved communities in the SJV nonattainment area and to better understand the context of our proposed action on the 2012 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan on these communities, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[263] Our screening-level analysis indicates that all eight counties in the SJV score above the national average for the EJSCREEN ''Demographic Index'' (*i.e.,* ranging from 48% in Stanislaus County to 61% in Tulare County, compared to 36% nationally).[264] The Demographic Index is the average of an area's percent minority and percent low income populations, *i.e.,* the two populations explicitly named in Executive Order 12898.[265] All eight counties also score above the national average for demographic indices of ''linguistically isolated population'' and ''population with less than high school education.''

With respect to pollution, all eight counties score at or above the 97th percentile nationally for the $PM_{2.5}$ index and seven of the eight counties in the SJV score at or above the 90th percentile nationally for the $PM_{2.5}$ EJ index, which is a combination of the Demographic Index and the $PM_{2.5}$ index. Most counties also scored above the 80th percentile for each of 11 additional EJ indices included in the EPA's EJSCREEN analysis. In addition, several

[256] See 40 CFR 93.118(e)(4)(iii).

[257] 40 CFR 93.118(e)(4).

[258] The EPA found the 2025 budgets adequate in our 2021 Proposed Rule. See also, the EPA's 2012 Annual $PM_{2.5}$ TSD, 41.

[259] 40 CFR 93.120(a)(3).

[260] 40 CFR 93.120(a)(2).

[261] Id.

[262] 40 CFR 93.120(a)(1).

[263] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators representing each of the eight counties in the San Joaquin Valley. We note that the indicators for Kern County are for the entire county. While the indicators might have slightly different numbers for the SJV portion of the county, most of the county's population is in the SJV portion, and thus the differences would be small. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

[264] EPA Region IX, ''EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area,'' August 2022.

[265] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). The score for a particular indicator measures how the community of interest compares with the State, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only 5% of the US population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2 (September 2019).

counties scored above the 90th percentile for certain EJ indices, including, for example, the Ozone EJ Index (Fresno, Kern, Madera, Merced, and Tulare counties), the National Air Toxics Assessment (NATA) Respiratory Hazard EJ Index (Madera and Tulare counties), and the Wastewater Discharge Indicator EJ Index (Merced, San Joaquin, Stanislaus, and Tulare counties).[266]

As discussed in the EPA's EJ technical guidance, people of color and low-income populations, such as those in the SJV, often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[267] Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.[268] The EPA is committed to environmental justice for all people, and we acknowledge that the SJV nonattainment area includes minority and low income populations that are subject to higher levels of $PM_{2.5}$ and other pollution relative to State and national averages, and that such concerns could be affected by this action.

If the EPA were to finalize the proposed disapprovals described in section II of this proposed rule, California would be required to submit a plan revision for the SJV for the 2012 annual $PM_{2.5}$ NAAQS to address the identified deficiencies. In addition, as summarized in section V of this proposed rule, such final action would trigger clocks for the SJV for offset sanctions 18 months after the final rule effective date, highway funding sanctions six months after the offset sanctions, and the obligation for the EPA to promulgate a Federal implementation plan (FIP) within two years of the final rule effective date. These obligations ensure that the identified deficiencies are resolved in an expeditious manner, consistent with the principles of environmental justice.

We note that, in developing and proposing draft regulations for governing board consideration, both CARB and the District consider the potential benefits of proposed measures for reducing health hazards to disadvantaged communities, such as diesel PM exposure near Heavy-Duty truck corridors and indoor smoke exposure from residential wood burning. There may be further opportunities to address EJ concerns through such control development and implementation.

More broadly, California law has established additional requirements for community-focused action to reduce air pollution in the State. For example, in response to California Assembly Bill 617 (2017), CARB and the District have engaged communities in the SJV, performed technical evaluations, and ultimately selected four communities (South Central Fresno, Shafter, Stockton, and Arvin/Lamont) that are in varying stages of developing and implementing community air monitoring programs and community emission reduction programs.[269] Furthermore, grant programs implemented by the local, State, and Federal authorities may serve to smooth and accelerate emission reductions of $PM_{2.5}$ and its precursor pollutants in the SJV, thereby relieving some of the cumulative burden on disadvantaged communities in the SJV nonattainment area.[270]

IV. Title VI of the Civil Rights Act

As noted in section I.C of this proposed rule, the EPA received a comment letter dated January 28, 2022 (the Public Justice Comment Letter), on the 2021 Proposed Rule from a coalition of 13 organizations.

The commenters urge the EPA to disapprove the Serious area plan ''because EPA has failed to require CARB/SJV to provide necessary assurances that the State implementation plan complies with Title VI of the Civil Rights Act of 1964. The on-going environmental justice and air pollution crisis demand EPA reverse course and disapprove the 2012 plan.'' [271] To support this argument, the commenters provide information regarding the racial demographics of the SJV, the potential for disparate impacts from exposure to $PM_{2.5}$, and specific aspects of the SJV $PM_{2.5}$ Plan that the commenters believe result in disparate impacts. The commenters point to past precedent in which the EPA has considered compliance with Title VI of the Civil Rights Act (Title VI) in the SIP context through CAA section 110(a)(2)(E). The commenters also note that thus far California has provided no ''demonstration'' that the Serious area plan does not cause or exacerbate disparate impacts on affected communities in the SJV. Thus, the commenters assert that the EPA must disapprove the Serious area plan because the State did not provide ''required assurances'' of compliance with Title VI.

At this time, the EPA has not issued any guidance or regulations concerning what might be required for purposes of CAA section 110(a)(2)(E) as it regards Title VI. The EPA has addressed other aspects of section 110(a)(2)(E) in the context of infrastructure SIP submissions in its September 2013 ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Similarly, EPA regulations only address other aspects of section 110(a)(2)(E) in 40 CFR Sections 51.230–232.

A. Background on CAA Section 110(a)(2)(E)

For purposes of background, section 110(a)(2)(E) of the CAA, in relevant part and with emphasis added, reads as follows:

> (2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—. . .
>
> (E) provide (i) *necessary assurances* that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan *(and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),* (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.[272]

[266] Notably, Tulare County scores above the 90th percentile on six of the 12 EJ indices in the EPA's EJSCREEN analysis, including the $PM_{2.5}$ EJ Index, which is the highest count among all SJV counties.

[267] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[268] Id. at section 4.1.

[269] For further information, see, *e.g.,* SJVUAPCD, ''Item Number 9: Receive Progress Reports on AB617 Community Emission Reduction Program Implementation,'' November 18, 2021.

[270] For example, through the EPA's Targeted Airshed Grant program, the District has competed for, and the EPA has granted 13 awards to the District from 2015 through 2021, totaling $77.4 million, to replace older, dirtier woodstoves, agricultural equipment, heavy-duty trucks and yard trucks, and agricultural nut harvesters with cleaner equipment. A list of the Targeted Airshed Grants the EPA awarded in fiscal years 2015–2020 is accessible online at *https://www.epa.gov/air-quality-implementation-plans/targeted-airshed-grant-recipients.* These EPA grants support projects to reduce emissions in areas facing the highest levels of ground-level ozone and $PM_{2.5}$.

[271] Public Justice Comment Letter, 2.

[272] 42 U.S.C. Section 7410(a)(2)(E) (emphasis added).

The EPA has previously addressed CAA section 110(a)(2)(E)(i), Title VI, and necessary assurances in a 2012 action on a nonattainment plan SIP submission from California for purposes of the ozone NAAQS.[273] Comments submitted on the EPA's April 24, 2012 proposed action contended that the SIP submission was not in compliance with CAA section 110(a)(2)(E) because of alleged violations of Title VI related to the regulation of pesticides as precursors to ozone (as volatile organic compounds). To evaluate the commenter's concerns, the EPA sought additional necessary assurances from the State concerning its regulation of pesticides. California submitted additional information to the EPA concerning the State's activities that were part of the resolution of a Title VI complaint, and additional information concerning the State's regulation of pesticides. California submitted this information to provide ''necessary assurances'' to the EPA that implementation of the requirements of the SIP submission would not violate Title VI. The EPA accepted this information as providing adequate necessary assurances for purposes of section 110(a)(2)(E) and did not require the State to make any substantive changes to support approval of the SIP revision.

Commenters in the 2012 action asserted that California had not provided sufficient necessary assurances. In the response to comments in the 2012 action, the EPA explained that ''Section 110(a)(2)(E), however, does not require a State to 'demonstrate' it is not prohibited by Federal or State law from implementing its proposed SIP revision. Rather, this section requires a State to provide 'necessary assurances' of this.'' [274] The EPA further explained,

> Courts have given EPA ample discretion in deciding what assurances are ''necessary'' and have held that a general assurance or certification is sufficient. (''EPA is entitled to rely on a state's certification unless it is clear that the SIP violates state law and proof thereof * * * is presented to EPA.'' *BCCA Appeal Group* v. *EPA,* 355 F.3d 817, 830 fn 11 (5th Cir. 2003)).[275]

The EPA received a petition for review (from groups overlapping with the groups that sent the Public Justice Comment Letter) of the EPA's October 26, 2012 final action which was reviewed and ultimately decided in EPA's favor by the Ninth Circuit Court of Appeals.[276] The Court used an arbitrary and capricious standard of review to evaluate the EPA's conclusion that the State had provided adequate ''necessary assurances'' that implementation of the SIP is not prohibited by Federal law—specifically, Title VI of the Federal Civil Rights Act of 1964—per the language of section 110(a)(2)(E). The Ninth Circuit found that the EPA fulfilled its duty to provide a reasoned judgment because its determination was cogently explained and supported by the record. In dismissing the petition, the Court explained that ''[t]he EPA has a duty to provide a reasoned judgment as to whether the State has provided 'necessary assurances,' but what assurances are 'necessary' is left to the EPA's discretion.'' [277]

B. Background on Title VI of the Civil Rights Act of 1964

For purposes of background context, Title VI prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. Under the EPA's nondiscrimination regulations, which implement Title VI and other civil rights laws,[278] recipients of EPA financial assistance are prohibited from taking actions in their programs or activities that are intentionally discriminatory and/or have an unjustified disparate impact.[279] This includes policies, criteria or methods of administering programs that are neutral on their face but have the effect of discriminating.[280] Under the EPA's regulation, recipients of EPA financial assistance are also required to have in place certain procedural safeguards, including grievance procedures that assure the prompt and fair resolution of external discrimination complaints.[281]

The EPA carries out its mandate to ensure that recipients of EPA financial assistance comply with their nondiscrimination obligations by investigating administrative complaints filed with the EPA alleging discrimination prohibited by Title VI and the other civil rights laws; [282] initiating affirmative compliance reviews; [283] and providing technical assistance to recipients to assist them in meeting their Title VI obligations. In the current matter being addressed in this action, no Title VI complaint was filed regarding CARB or the District.[284] Also, the EPA (through the External Civil Rights Compliance Office or ECRCO) has not initiated and is not currently conducting a compliance review of either CARB or SJVUAPCD.

C. Comments Received on 2021 Proposed Rule

The commenters raise the issue of compliance with section 110(a)(2)(E) with respect to Title VI. The commenters contend that the SIP submission for the SJV is not in compliance with CAA section 110(a)(2)(E) because California has not provided necessary assurances to ensure that implementation of the SIP is in compliance with Title VI. The commenters did not submit these specific comments to CARB or the SJVUAPCD during the State's development and adoption process of the proposed SIP revisions that are currently at issue. The commenters are not required to have done so to raise this issue with the EPA now, but as a result, the SIP submission to the EPA does not include any CARB or District response concerning this specific issue. In addition, the SIP submission does not include specifically identified necessary assurances per section 110(a)(2)(E) provided by the State.

At the outset, the EPA acknowledges the statements in the comment letter that the SJV area has historically been designated as nonattainment for the $PM_{2.5}$ NAAQS and that the SJV area includes higher representation of persons of color compared to the State average. Although in this action the EPA is not proposing to disapprove on the basis of CAA section 110(a)(2)(E), if the EPA disapproves the Serious area plan as proposed today, California would need to submit a revised Serious area plan for the SJV. The EPA expects that any such revision would comply with the requirements of section 110(a)(2)(E) and that CARB and the District will engage with the community through notice and comment during the SIP

[273] 77 FR 65294 (October 26, 2012) (final rule); 77 FR 24441 (April 24, 2012) (proposed rule).

[274] 77 FR 65294, 65302, column 2.

[275] Id.

[276] *El Comité Para El Bienstar de Earlimart et al. (El Comité)* v. *EPA,* 786 F.3d 688 (9th Cir. 2015).

[277] 786 F.3d at 700.

[278] 40 CFR part 7 and part 5.

[279] 40 CFR Sections 7.30 and 7.35.

[280] 40 CFR Section 7.35(b).

[281] 40 CFR Section 7.90.

[282] 40 CFR Section 7.120.

[283] 40 CFR Section 7.115.

[284] The EPA's External Civil Rights Compliance Office (ECRCO) contacted Mr. Brent Newell, signatory to the Public Justice Comment Letter, to see whether the commenters intended to file a Title VI administrative complaint with the EPA. In response, the commenters stated, ''[t]he comments submitted were neither intended nor styled as a Title VI complaint. The comments raise significant issues with respect to EPA's proposed approval, including the section 110(a)(2)(E) issues and EPA's authority and duty to enforce Title VI, and we expect EPA to respond to all of the issues in the final action/response to comments.'' Email exchange dated February 8, 2022, between Brent Newell, Public Justice and Lilian Dorka, Director, External Civil Rights Compliance Office, EPA Office of General Counsel.

development process for its revised Serious area plan prior to submitting a revised SIP to the EPA, and specifically with respect to necessary assurances relative to Title VI. The new SIP development process provides an important opportunity for CARB and the District to identify potential adverse disparate impacts on the basis of race, color, or national origin from its revised Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS and address them as appropriate.

The EPA acknowledges that it has not issued national guidance or regulations concerning implementation of section 110(a)(2)(E) as it pertains to consideration of Title VI and disparate impacts on the basis of race, color, or national origin in the context of the SIP program. Such guidance is forthcoming and will address CAA section 110(a)(2)(E)'s necessary assurance requirements as they relate to Title VI. In the interim, CARB and the District may find existing EPA and DOJ Title VI and environmental justice resources useful, even though these documents do not relate specifically to CAA section 110(a)(2)(E).[285] Additionally, the EPA's ECRCO is available to provide technical assistance regarding Title VI compliance to CARB and/or the District as they develop the revised Serious area plan for the 2012 annual $PM_{2.5}$ NAAQS.

V. Summary of Proposed Actions and Request for Public Comment

For the reasons discussed in this proposed rule, under CAA section 110(k)(3), the EPA proposes to disapprove, as a revision to the California SIP, the following portions of the SJV $PM_{2.5}$ Plan for the 2012 annual $PM_{2.5}$ NAAQS to address the CAA's Serious area planning requirements in the SJV nonattainment area:

(1) the demonstration that BACM, including BACT, for the control of ammonia emission sources and for the control of NO_X and direct $PM_{2.5}$ building heating emission sources will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B) and 40 CFR 51.1010(a));

(2) the demonstration that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2025 (CAA sections 188(c)(2) and 189(b)(1)(A) and 40 CFR 51.1011(b));

(3) plan provisions that require RFP toward attainment by the applicable date (CAA section 172(c)(2) and 40 CFR 51.1012(a));

(4) quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c) and 40 CFR 51.1013(a)(2)(i)); and

(5) motor vehicle emissions budgets for 2025 as shown in Table 3 of this proposed rule (CAA section 176(c) and 40 CFR part 93, subpart A).

We are also proposing to disapprove the State's precursor demonstration for ammonia. Our proposed action on the emissions inventory and contingency measure elements remains unchanged from our 2021 Proposed Rule.

If we finalize the proposed disapprovals for BACM, the attainment demonstration, RFP, quantitative milestones, or motor vehicle emission budgets, the offset sanction in CAA section 179(b)(2) would apply in the SJV 18 months after the effective date of a final disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed.[286] Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with CARB and the SJVUAPCD to correct the deficiencies in a timely manner.

In addition to the sanctions, CAA section 110(c)(1) provides that the EPA must promulgate a Federal implementation plan (FIP) addressing any disapproved elements of an attainment plan two years after the effective date of disapproval unless the State submits, and the EPA approves, a SIP submission that cures the disapproved elements.

Furthermore, if we take final action disapproving the 2012 annual $PM_{2.5}$ NAAQS portion of the SJV $PM_{2.5}$ Plan, a conformity freeze will take effect upon the effective date of any final disapproval (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform.[287]

We will accept comments from the public on these proposals for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial

[285] See ECRCO's Toolkit Chapter I at: *https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf,* January 18, 2017, and Department of Justice ''Title VI Legal Manual (Updated)'' at: *https://www.justice.gov/crt/fcs/T6Manual6.* See also, *e.g.,* EPA, ''Guidance on Considering Environmental Justice During the Development of Regulatory Actions,'' (May 2015), and EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' (June 2016).

[286] 40 CFR 52.31.

[287] See 40 CFR 93.120(a).

direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to partially disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA's evaluation of this issue is contained in the section of the preamble titled ''Environmental Justice Considerations.''

List of Subjects 40 CFR Part 52

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

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

Dated: September 28, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–21492 Filed 10–4–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 192 October 5, 2022

Part IV

The President

Executive Order 14084—Promoting the Arts, the Humanities, and Museum and Library Services

Memorandum of September 30, 2022—Delegation of Authority Under Public Law 117–169

Federal Register
Vol. 87, No. 192
Wednesday, October 5, 2022

Presidential Documents

Title 3—

The President

Executive Order 14084 of September 30, 2022

Promoting the Arts, the Humanities, and Museum and Library Services

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

Section 1. *Policy.* The arts, the humanities, and museum and library services are essential to the well-being, health, vitality, and democracy of our Nation. They are the soul of America, reflecting our multicultural and democratic experience. They further help us strive to be the more perfect Union to which generation after generation of Americans have aspired. They inspire us; provide livelihoods; sustain, anchor, and bring cohesion within diverse communities across our Nation; stimulate creativity and innovation; help us understand and communicate our values as a people; compel us to wrestle with our history and enable us to imagine our future; invigorate and strengthen our democracy; and point the way toward progress.

It is the policy of my Administration to advance the cultural vitality of the United States by promoting the arts, the humanities, and museum and library services. To that end, my Administration will advance equity, accessibility, and opportunities for all Americans, particularly in underserved communities as defined in Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), so that they may realize their full potential through the arts, the humanities, and access to museum and library services. Additionally, we will strengthen America's creative and cultural economy, including by enhancing and expanding opportunities for artists, humanities scholars, students, educators, and cultural heritage practitioners, as well as the museums, libraries, archives, historic sites, colleges and universities, and other institutions that support their work.

Under my Administration, the arts, the humanities, and museum and library services will be integrated into strategies, policies, and programs that advance the economic development, well-being, and resilience of all communities, especially those that have historically been underserved. The arts, the humanities, and museum and library services will be promoted and expanded to strengthen public, physical, and mental health; wellness; and healing, including within military and veteran communities. We will enhance access to high-quality arts and humanities education and programming with the aim of enabling every child in America to obtain the broad creative skills and enrichment vital to succeed. My Administration's efforts to tackle the climate crisis will be bolstered through Federal and societal support for and advancement of the arts, the humanities, and museum and library services. We will also safeguard and promote the artistic and cultural heritage of the United States and its people domestically and internationally. Finally, my Administration will strengthen our Nation's democracy, increase civic engagement and public service, bolster social cohesion, and advance the cause of equity and accessibility by lifting up more—and more diverse—voices and experiences through Federal support for the arts, the humanities, and museum and library services.

Sec. 2. *The President's Committee on the Arts and the Humanities.* (a) There is established within the Institute of Museum and Library Services (IMLS) the President's Committee on the Arts and the Humanities (Committee) to inform and support the national engagement with Americans

necessary to advance the arts, the humanities, and museum and library services.

(b) The Committee shall be structured as follows:

(i) The Committee shall be composed of the Chairperson of the National Endowment for the Arts (NEA), the Chairperson of the National Endowment for the Humanities (NEH), the Director of the IMLS, and no more than 25 additional persons who are not full-time officers or employees of the Federal Government (non-Federal members) who shall be appointed by the President. The non-Federal members:

(A) shall be selected from among private individuals and State, local, and Tribal officials;

(B) shall have a diversity of backgrounds, experiences, and areas of expertise; and

(C) shall have a demonstrated interest in and commitment to support for the arts, the humanities, and museum and library services.

(ii) The Librarian of Congress, the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, and the Chairman of the Board of Trustees of the John F. Kennedy Center for the Performing Arts shall be invited to serve as additional, non-voting members of the Committee.

(iii) The President shall designate a Chair or two Co-Chairs from among the non-Federal members of the Committee.

(c) The Committee shall be solely advisory and shall provide recommendations to the President and the heads of the NEA, NEH, and IMLS on:

(i) advancing the policy objectives set forth in section 1 of this order, including with respect to community well-being; economic development and mobility; public, physical, and mental health; education; resilience and adaptation, as well as combatting climate change; civic and democratic engagement; and support for the artistic and cultural heritage of the United States;

(ii) promoting philanthropic and private sector engagement with and support for the arts, the humanities, and museum and library services to advance the policy objectives set forth in section 1 of this order;

(iii) enhancing the effectiveness of Federal support for the arts, the humanities, and museum and library services to advance the policy objectives set forth in section 1 of this order; and

(iv) catalyzing the engagement of the Nation's artists, humanities scholars, cultural heritage practitioners, and leaders in the arts, the humanities, and museum and library services, including with respect to:

(A) engagement in significant cultural events; and

(B) promoting the recognition of excellence in the arts, the humanities, and museum and library services, and their relevance to our Nation's social and economic well-being.

(d) The Committee's recommendations pursuant to subsection (c) of this section shall be conveyed in accordance with subsection (g) of this section.

(e) The Committee shall be administered as follows:

(i) The IMLS shall provide funding and administrative support for the Committee, including facilities, staff, equipment, and other support services, to the extent permitted by law and subject to the availability of appropriations. Private funds accepted under the IMLS's gift authority may be used to pay expenses of the Committee, as appropriate and consistent with applicable law.

(ii) The Director of the IMLS may designate an Executive Director to coordinate the work of the Committee. The Executive Director shall report to the Director of the IMLS and shall meet with all of the heads of the NEA, NEH, and IMLS on a quarterly basis.

(iii) Members of the Committee shall serve without compensation for their work on the Committee, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(f) The Committee shall meet twice a year.

(g) On an annual basis, and at other times as appropriate, the Chair or Co-Chairs of the Committee shall report to the President through the heads of the NEA, NEH, and IMLS on the Committee's progress in carrying out its mission, any recommendations it has, and its plans for the coming year.

(h) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Committee, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Director of the IMLS, in consultation with the heads of the NEA and NEH, and in accordance with guidelines issued by the Administrator of General Services.

(i) The Committee shall terminate 2 years from the date of this order, unless extended by the President.

Sec. 3. *Interagency Cooperation to Advance the Arts and Humanities.* (a) The heads of executive departments and agencies and White House policy councils, including those listed below, or their designees, who must be senior officials, shall advise, coordinate with, and consider undertaking joint projects and initiatives with the heads of the NEA, NEH, and IMLS, as appropriate and consistent with applicable law, to advance the policy objectives set forth in section 1 of this order:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

(ix) the Department of Health and Human Services;

(x) the Department of Housing and Urban Development;

(xi) the Department of Transportation;

(xii) the Department of Energy;

(xiii) the Department of Education;

(xiv) the Department of Veterans Affairs;

(xv) the Office of Management and Budget;

(xvi) the Small Business Administration;

(xvii) the General Services Administration;

(xviii) the Corporation for National and Community Service;

(xix) the National Institutes of Health;

(xx) the National Science Foundation;

(xxi) the Domestic Policy Council;

(xxii) the National Economic Council;

(xxiii) the Gender Policy Council;

(xxiv) the White House Climate Policy Office; and

(xxv) the Office of Science and Technology Policy.

(b) The heads of agencies described in section 3502(5) of title 44, United States Code, are encouraged to comply with the provisions of this section.

(c) The heads of the NEA, NEH, and IMLS shall consider joint initiatives that would further the policy objectives set forth in section 1 of this order, and then may carry out those initiatives to the extent permitted by law.

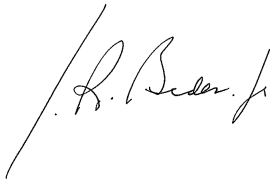
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
September 30, 2022.

[FR Doc. 2022–21839
Filed 10–4–22; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

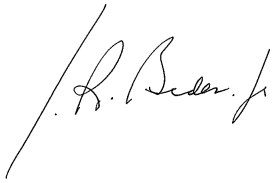
Memorandum of September 30, 2022

Delegation of Authority Under Public Law 117–169

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Director of the Office of Management and Budget the functions and authorities vested in the President by section 50141(d)(1) of Public Law 117–169, with respect to the certification of certain loan guarantees and projects.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 30, 2022

[FR Doc. 2022–21844
Filed 10–4–22; 11:15 am]
Billing code 3110–01–P

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